NEXT ANNUAL MEETING WILL BE HELD AT LOS ANGELES, JULY 16-19

AMERICAN BAR ASSOCIATION JOVRNAL

VOL. XXI MARCH, 1935 NO 3

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BY JAMES GRAFTON ROGERS

The World Court—As Things Now Stand
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A New Field for Service—The Junior Bar
BY WILLIAM A. ROBERTS

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Executive Committee Meets at Jacksonville

AT its meeting in Jacksonville, Fla., on January 29-31 the Executive Committee gave its approval to proposals for important Federal legislation dealing with the administrative side of the national government. This action was taken in accordance with the recommendations contained in the report of the Association's Committee on Administrative Law.

The first recommendation thus approved was to authorize the committee to draft, or assist in the drafting of, a bill to establish a Federal administrative court, embodying the substance of the features set forth by the committee, together with any other matters of detail reasonably incident thereto, and to appear before the appropriate committees of Congress in behalf of such a bill and by that and other proper steps to urge its enactment.

The Committee on Administrative Law was further authorized to draft or assist in drafting, and to take proper steps to secure the passage of Federal legislation embodying the principle that "rules, regulations and other exercises of legislative power by executive or administrative officials should be made easily and readily available at some central office, and, with appropriate provision for emergency cases, should be subjected to certain requirements by way of registration and publication as prerequisite to their going into force and effect;" and providing further that "decisions of those administrative tribunals which do not now publish their decisions should similarly be made easily and readily available at such central office and should be periodically published.

Another measure which the committee was authorized to support has already been introduced in the Senate. It is S. 213, introduced by Senator Logan, and its purpose is to amend Sec. 113 of the Criminal Code of March 4, 1909, 35 Stat. 1109 (U. S. C. Title 18, sec. 203) so as to prohibit, under severe penalty, any Senator, member of Congress, National or State Committeeman or Committeewoman of any political party, and a number of other enumerated government officials and employees, from directly or indirectly rendering "any service or assistance of whatever character for or on behalf of any person, firm, corporation or other association in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, imprisonment or other matter or thing in which the United States is a party directly or indirectly interested," before departments, commissions, or other instrumentalities of the United States.

The plan for the proposed administrative court, as outlined in an appendix to the Committee's report, provides that it shall take over the functions of the present U. S. Court of Claims, the U. S. Court of Customs and Patent Appeals, the United States Customs Court and the Board of Tax Appeals. The present members of those tribunals would be transferred to the new court and become Justices. They would hold for life and there would be the same provisions for retirement as now apply to Federal judges. Later appointments could be made by the President.

There would be a trial and an appellate division, the Chief Justice determining the number of Justices to sit in each division and making the assignments thereto. Other provisions are for the designation from time to time by the Chief Justice of one or two assistant Chief Justices to preside over one or both of the two Divisions; for a further division of the Trial Division into Sections composed of one or more Justices, the assignments to be made by the Chief Justice; for the organization of the Appellate Division into Sections of not more than three Justices each, if the nature of the Court's work should demand it; for the employment by the Trial Division of commissioners and examiners both regular and special—the latter to meet unusually heavy demands of an occasional character.

Both the Trial and Appellate Divisions would have their headquarters in Washington, but these and each of their sections would be ambulatory, with power to hold hearings anywhere in the United States. Moreover, so far as possible within the limits of the Constitution, the Chief Justice would have power to designate Federal District Court

Judges as Justices *ad hoc* of the Court in order to afford immediate trial in the district in which the individual lives, where the Court is unable to have one of its Justices attend immediately, or where the small number of cases or the distance do not justify the attendance of a Justice.

The Trial Division would be vested with the jurisdiction now exercised by the courts previously named, and also that of the District Courts of the United States and the Supreme Court of the District of Columbia over claims against the United States or against Collectors of Internal Revenue, and of the latter tribunal over actions for writ of mandamus or injunction or other extraordinary remedy against officers and employees of the United States. The Appellate Division would review judgments and decisions of the Trial Division. The Court would be a court of record and its decisions would be reviewable on certiorari or certificate of the Appellate Division by the U. S. Supreme Court.

A hint that the proposal may at a later date be extended to include similar court powers now possessed by such bodies as the Interstate Commerce Commission, Federal Trade Commission, Federal Communications Commission, Federal Securities and Exchange Commission, and like bureaus is found in the statement of the Administrative Law Committee's report that it is "impolitic to establish more than a nucleus of such a court" at the present time, but that it is "highly important from the outset that court should function efficiently and be able to demonstrate its advantages."

The Executive Committee also approved, with a slight amendment, the bill dealing with the Mexican Divorce situation as proposed by the sub-committee on that subject. The measure forbids the use of the mails to convey letters, circulars or notices of any kind giving information of the means of securing divorce in any other country than that of the actual domicile of the husband or wife or of either of them, and calculated to induce or incite a person to use or apply for any further information on the subject. A heavy penalty is provided for knowingly depositing such unmailable matter in the mails or for taking the same from the mails for the purpose of circulating it. The Executive Committee also approved the Federal Interpleader Bill in its present amended form.

The invitation to visit Hawaii on the conclusion of the Annual Meeting at Los Angeles, so cordially extended by the Governor and the Bar Association of the Territory, was accepted and a party will be made up to take the trip. The President was authorized to appoint a committee to examine the articles submitted in the 1935 Essay Contest under the Ross Bequest, and he named the same members who acted last year—Dean Roscoe Pound, Hon. George T. McDermott and Hon. Henry Upson Sims. It adopted a resolution authorizing the President to appoint a special committee to present a suitable memorial to the President of the United States, the Attorney General and the Congress, in behalf of the acquisition of portraits of all Associate Justices of the Supreme Court of the United States, to be placed in the new building of the Supreme Court. In accordance with this resolution, President Loftin appointed the following members: William L. Ransom, N. Y.; Albert C. Ritchie, Baltimore, Md.; Roscoe Pound, Cambridge, Mass.; Frank J. Hogan, Washington, D. C.; Newton D. Baker, Cleveland, O.; Samuel S. Willis, Detroit, Mich.; Charles S. Cushing, San Francisco; Charles Warren, Washington, D. C.; Silas H. Strawn, Chicago; Robert D. Dodge, Boston; O. R. McGuire, Washington, D. C.

It also approved the proposal to raise a maintenance fund for the Chief Justice Edward White Memorial. His birthplace, near Thibodeaux, La., has been purchased and restored to its original condition by the Knights of Columbus, whose members in Louisiana and elsewhere contributed $12,000 for the purpose. It is proposed to maintain it as a permanent memorial to a great Chief Justice and a great citizen, and a maintenance fund is required for this purpose. There is to be nothing of a religious or quasi-religious nature attached to the Memorial. The Maintenance Fund is headed by Chief Justice Hughes and Justices Van Devanter and Roberts of the U. S. Supreme Court and Mr. Cropley, the Clerk of that tribunal. Mr. Francis L. Knobloch, of Thibodeaux, La., is in charge of the movement to raise an adequate fund.

The report for the Committee on Coordination of the Bar, made by Mr. Philip J. Wickser, a member, gave the results of that important movement to date. The title of Mr. Will Shafroth, who has had charge of the executive end of the program, was changed from Assistant to the President in Charge of Coordination to Director of the National Bar Program. Reports of various other Committees and Sections were received and disposed of. Treasurer John H. Voorhees presented a report showing a satisfactory financial condition of the Association. Secretary MacCracken's report gave details of the work in his office for the past six months. Mr. Joseph C. Cheny, of Yakima, Wash., was elected a member of the State Council to fill the vacancy caused by the death of Harold B. Gilbert.

At its closing meeting the Executive Committee expressed its cordial appreciation of the hospitality extended by the Florida Bar Association, the Jacksonville Bar Association and the citizens of Jacksonville. It was decided to hold the spring meeting at Washington, D. C., on May 6.

A. B. A. State Council for Missouri Active in Promoting National Bar Program

THE Missouri State Council of the American Bar Association, under the leadership of its General Council member Jacob M. Lashley, is taking an active part in informing the thirty-four local bar associations in Missouri concerning the 5-point program of the American Bar Association. Letters have been written to the officers of all these local associations, advising them of the National Bar Program in considerable detail and asking permission to have a speaker address their association on this subject. The replies have been enthusiastic, and a number of local associations are arranging meetings which are built entirely around a discussion of the topics of the National Bar Program. At each of such meetings a resolution is being presented which endorses the coordination efforts of the American Bar Association and pledges the unqualified support of the local association to cooperation with the national organization in this work by the appointment of appropriate committees and in other ways.

Prominent lawyers of the state have been selected to make these addresses, and each member of the State Council has undertaken to secure speakers on the subject in his particular part of the state. The Missouri Council has endeavored at the time of such meetings to get as much publicity as possible for the addresses and for the meeting so that the laity may be fully informed of what the lawyer is doing for them outside of his regular practice. In some cases it has been suggested that after the address is made to the profession, the meeting be thrown open to the public and a talk made to the laity in general on this subject.

The Missouri bar associations have shown a particularly keen appreciation of the necessity of public relations work, and by means of such things as the "Pageant of the Constitution" put on in Kansas City last year and the radio programs put on by the bar in both Kansas City and St. Louis in the past year, have done a great deal to make the public understand the efforts the profession is making to improve the

administration of justice. The work of the State Council in this field is an admirable illustration of the possibilities which exist for constructive work on the part of these state representatives of the American Bar Association.

American Scandinavian Legal Society Being Organized

THE American Scandinavian Legal Society, which will have as its purpose the making of an intensive study of ancient Scandinavian Law and of its influence on Anglo-Saxon jurisprudence, is now in process of organization. Judge Sveinbjorn Johnson, legal counsel for the University of Illinois, is largely responsible for the project, which was launched during the meeting of the Association of American Law Schools in Chicago in December. Since then there has been a meeting to develop the plan which was participated in by Judge Johnson, Prof. Curtis Chandler Williams of the University of West Virginia, Prof. A. M. Tollefson of Drake University, and Dean O. H. Thormodsgard and Prof. S. B. Severson of the University of North Dakota.

Membership will be limited to law teachers, active practitioners of scholarly inclinations who have shown an interest in this field, and selected teachers of history. The interest and cooperation of scholars in Scandinavian countries will be enlisted as far as possible and steps have already been taken in that direction. The men behind the project of the new society feel that there is a real interest in rather responsible quarters in the relations of the ancient Scandinavian law to the foundation principles of the Anglo-American legal system. Also that this field has heretofore been very little explored by scholars writing in English and not particularly by students writing in other languages. They are therefore hopeful that by means of the society and the impulse it may give they may make a real contribution to the field of legal history as well as that of comparative jurisprudence.

The final organization will be perfected during the next meeting of the Association of American Law Schools. Judge Johnson will serve as temporary secretary until that time.

American Chosen President of International Body

THE Institut International de Droit Public held its annual session on October 5, 1934, in Paris under the presidency of M. N. Politis. The Institut announced the publication of the first six volumes of the "Bibliophique de l'Institut International de Droit Public" containing monographs on a number of subjects of importance. The Institut has published the sixth volume of its Annuaire in some 900 pages, collecting together the important public laws and the text of constitutions and constitutional amendments adopted by all countries during the year 1933. The Annuaire thus gathers together the specific data on constitutional changes throughout the world, and is of peculiar importance to those interested in such constitutional developments. Professor James W. Garner of the University of Illinois has been elected president of the Institut for the current year.

American Legal History Society

THE American Legal History Society recently held its Second Annual Meeting in Chicago. Encouraging progress was reported in the discovery of material for publication. Two volumes will this year be issued, for sustaining members of 1934 and 1935 respectively, selected from the following materials (which two, depending upon the completion of editorial labors and the relative costs of publication): *Delaware Reports*, 1793-1821, preceding the present printed *Reports* of that state; *Trial Notes* made by Judge Increase Sumner of the Supreme Judicial Court of Massachusetts, 1782-97, throwing much light on the legal condition of his time; *Journal of the Court of Common Right of East Jersey*, 1683-1702, covering both law and equity jurisdiction; and, possibly, the *Legal Diary* of William Pynchon and associates in the Court of Small Cases in Springfield, Massachusetts, 1640-70. In addition to these materials, it is planned to initiate work very soon on various other bodies of material.

The establishment this year of a *Journal of Legal History* is highly probable.

All these plans, however, are dependent for their realization upon the collection of money. Every lawyer interested in the development of American law is desired as a member of the Society (regular membership, $2.00; sustaining membership $10.00); and the officers of the Society hope that its friends throughout the country will make every effort to secure contributions, otherwise, to its funds.

Boston Chamber of Commerce Calls on Judges to Take Command of Their Courts

THE Boston Chamber of Commerce, through its Committee on Judicial Procedure headed by A. Lawrence Lowell, demands that the judges of the Commonwealth be given full command in their courts in order that justice may be more efficiently administered. It insists that they be given the rule-making power and the power to advise juries with respect to matters of fact and that they exercise them fearlessly. It pithily declares that the function of the Judiciary is to administer justice and that this "function is not adequately exercised by sitting on a bench and watching justice float by."

The Committee was organized fourteen months ago to investigate the reasons for the failure of the public to receive that speedy justice to which it is entitled. It has heard judges, lawyers, public officials and laymen and has made separate studies through experts and committees. And its general finding, which underlies all its recommendations, is that the real administration of justice is a positive thing, consisting of positive powers, positively exercised, and that the time has come to quicken a sense of responsibility on the part of the Bench and to "clothe it with powers commensurate with the responsibility which it should assume."

The Committee finds that the judicial system of Massachusetts is fundamentally sound but that much of the machinery with which it operates is cumbersome and antiquated. It points to the years of delay in the trial of civil suits in the Superior Court and observes that "when recollections become hazy and witnesses disappear, trials tend to become mere competitions in imagination." It continues:

"In investigating the cause of delay in the trial of cases, we have been much impressed by the fact that it is no one's business to keep judicial procedure adapted to the needs of the time. The courts have not the power; for although they have some authority they have not enough to make them more than partially responsible for the present conditions. Many if not most of the rules of practice and procedure are made by the Legislature which acts only as bills are brought before it, and cannot be expected to maintain anything like effective supervision over such matters. Now responsibility cannot exist without power, nor should power ever be exercised without responsibility; and the only body in which both power and responsibility over court practice and procedure can properly be placed is the Judiciary.

"No public, no private, organization could render efficient service under the

methods by which justice is administered in this Commonwealth. The courts charged with one, and not the least important, of the three branches of our Government, are prevented from exercising their normal function, and are thus kept out of contact with a primary need of the people. They are almost confined to trying cases under regulations largely made elsewhere, instead of being intrusted with the duty of seeing that justice is fairly, fully and speedily administered. Hence they are in danger of mistaking for the public the Bar, whose point of view is by no means the same as that of the people at large.

"First and foremost, this Committee recommends that the courts be given full power to make their own rules of procedure.

"It is not fair to charge the Bench with responsibility for the law's delay and not give to it authority to design its own machinery. Rules of procedure are technical and intricate. It is not the proper function of the Legislature to go into details of this nature. It should empower the courts to make the rules, and then the courts should be held responsible for the results. The Congress of the United States has done this very thing with regard to the Federal Courts with high approval. Some states have done likewise with regard to their courts."

Referring to the excessive amount of work thrown on the Supreme Judicial Court, the Committee suggested that this may be relieved by cutting down the number of written opinions. A final court of appeals has two functions, it says, not wholly identical. "One is to render a final decision in the case at bar. This may involve only the application of well recognized principles of law to the particular facts or to the question whether the trial judge has erred. The other function is to expound the law where it has proved vague or uncertain. . . It would seem to be the latter function alone that needs a discussion of authorities, that only in cases involving questions novel or legally important is it necessary to write full opinions, while the others might be disposed of, so far as the reports are concerned, with a mere statement of the decisions reached."

Other recommendations are for jury fees in the Superior Court, study and revision of trial lists as to method, for directed verdicts for defendant by judges on their own initiative, without requiring him to rest his case, when satisfied evidence could not support a verdict for defendant, for prompt rendition of decisions, for abolition of part-time judges in the District Courts—judges who practice in the same courts in which they sit—and for more uniform penalties in these courts. It records its strong aversion to the manner in which capital cases in this State have been dramatized and allowed to drag out in a most unbecoming manner totally unnecessary to the ends of justice. But after all is said, it comes back to its major, fundamental thesis:

"The Committee has considered recommending drastic legislation in this connection, but the more it studies the matter, the more it has come to believe, as stated at the outset, that one of the prime causes for this congestion lies in the point of view of the judges themselves. From lawyers and laymen alike, the Committee has heard over and over again that the judges seem to consider themselves something akin to umpires only—to see that the contending parties keep within certain rules, some of their own making, more made by the Legislature. With few exceptions, they are said to have no apparent thought of taking real command in their own courtrooms to see that justice is fully and expeditiously administered. They do not seem to be acutely aware of the fact that they constitute one of the three great divisions of Government—the one charged with the administration of justice.

"With a changed point of view and additional authority, the Courts themselves may be able to bring the trial dockets reasonably up to date and keep them there."

American Bar Association Committee on Commerce to Hold Public Meeting March 19, 20 and 21

THE Committee on Commerce of the American Bar Association will hold public meetings in the building of the Chamber of Commerce of the State of New York, 65 Liberty Street, New York City, Tuesday, Wednesday and Thursday, March 19, 20 and 21, 1935, for hearing discussion of and recommendations concerning the subjects appearing upon the agenda or that may be appropriately added thereto.

The Committee cordially invites all persons interested in any of the subjects mentioned to attend its meetings either in person or by representative, and to submit written suggestions.

Very respectfully,
RUSH C. BUTLER, Chairman.

AGENDA

Tuesday, March 19

10:00 A. M.

1. Suggestions of new subjects including
   (1) Bills to extend authority of the Reconstruction Finance Corporation.
   (2) Bill to aid in stabilizing employment.
   (3) Two bills to prevent frauds in commerce.
   (4) Miscellaneous bills and resolutions.
2. United States Contract and Sales Bill.
3. Amendment to Food and Drug Act.

2:00 P. M.

4. Amendment to Food and Drug Act.

Wednesday, March 20

10:00 A. M.

1. Extension or other amendment of the National Industrial Recovery Act.

2:00 P. M.

2. Same subject.

Thursday, March 21

10:00 A. M.

1. Carrier regulation including
   (1) Consolidation.
   (2) Public ownership.
   (3) Motor vehicle regulation.
2. Amendments to Federal Arbitration Law.

2:00 P. M.

Executive Session.

Results of Questionnaire Concerning Certain Methods of Securing Law Students

ADVERTISING by Law schools, tending to commercialize the legal profession and to raise false expectations in law students, is thoroughly condemned by 120 American law colleges in a report made public by the Committee on Professional Ethics and Grievances of the American Bar Association. Law schools which employ persons to solicit students "overstep the proper bounds of vocational guidance" in the opinion of the deans of the schools surveyed, and are detrimental to the legal profession.

These opinions representing the consensus of 120 law colleges in the United States are the composite result of a questionnaire prepared by the American Bar Association's Committee on Professional Ethics and Grievances, which submitted advertisements and fact questions on solicitation to practically all of the law schools in the United States.

Schools sponsoring advertisements which offer "law in one year" were scored as "beautiful examples of shyster training." Some of the deans answering the questionnaire stated that participation in such advertisement by a lawyer should be cause for disbarment.

In addition to the detrimental effect that such advertising may have upon

the legal profession as a whole, it also has a harmful public consequence. It raises false expectation in prospective students; it tricks persons with lack of ability and of time into taking the courses on the assumption that they will soon be wealthy once they are admitted to the bar. Here is the breeding place of the shyster and the spawning place of bad ethics.

Such advertisements are generally sponsored, according to the opinions expressed in the survey, by schools offering inadequate training which will not prepare the student for bar examinations. Hence, a virtual fraud has been practiced on the public.

The law schools as a whole frowned upon solicitation of students by improper advertising or by personal activity. Schools employing teachers upon an understanding that the teacher was to secure pupils, or which encouraged their students to solicit other pupils, were ranked with ambulance chasers. Such activity, the law school deans pointed out, was improper for the same reason that it is improper for a lawyer to employ runners. Overcrowding of the bar with its consequent bad social effects was stressed as a reason for discouraging all such practices.

Court Decision Kills a Too Famous Section of Indiana's Constitution

SECTION 21 of Article VII of the Indiana Constitution of 1851-52 is no more, as a result of the decision of the Supreme Court of that State in In Re the Petition of Lemuel S. Todd. This is the too famous section which provides that anyone can practice law in the State who is a voter and of good moral character. It has been the object of attack by the Bar Association for many years, and the people voted to adopt an amendment to strike it from the Constitution at the general election in November, 1932—439,949 to 236,613. But it did not receive a majority of all the votes cast at that election and, under decisions of the Supreme Court announcing the rule that a proposed amendment which is submitted to the electors at a general election must receive such a majority, it was generally regarded as having failed.

But the advocates of higher educational standards for admission to the Bar had not awaited the removal of this monstrosity from the Constitution by popular vote. At their instance, the General Assembly of the State had the year before—in 1931—passed a statute which declared that "the Supreme Court of this State shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the State under such rules and regulations as it may prescribe." (Acts 1931, Ch. 63, p. 150.) The Supreme Court in July had proceeded to adopt rules regulating admission and under them an applicant was required to take an examination.

The case just decided arose from this requirement. The petitioner, Lemuel S. Todd, insisted that under the well known Section 21 of the Constitution neither the General Assembly nor the Supreme Court could require an examination for the purpose of testing professional fitness. Representatives of the Indiana Bar Association as *amici curiae* suggested that the petition be dismissed on the following grounds: First, that the rules of the Court, as to their substantive requirements, are valid as a reasonable means of ascertaining the "good moral character" and residence of the applicant and consequently do not violate Section 21, Art. VII. Secondly, Section 21 was stricken from the Constitution by the amendment at the general election Nov. 8, 1932.

This last contention presented the main issue on which the decision turned. The Court upheld it completely. It decided that the rule as to the vote required to adopt an amendment set forth in the cases of State vs. Swift (69 Ind. 505), In Re Denny (156 Ind. 104, 59 N. E. 359) and In Re Boswell (179 Ind. 292, 100 N. E. 833) is incorrect and that the true rule is that a proposed amendment, after being duly submitted, is approved by a majority of the votes cast on the amendment itself. The opinion approached the question with the preliminary declaration that when the overruling of previous decisions involves only a question of public interest in no way affecting private interests the rule of *stare decisis* does not control. "And this is especially true," it continues, "when a constitutional question is involved. Consequently, we feel no hesitancy in considering the merits of the constitutional question presented by *amici curiae*, and we feel freer to examine this question in view of the strong dissenting opinions in the cases of State vs. Swift and In Re Denny."

The decision of all the previous cases cited, as well as the case under consideration, hinged on the interpretation of the provision in Article VI of the Constitution that all amendments must be submitted "to the electors of the state" and be ratified "by a majority of said electors." State vs. Swift and In Re Denny had held that these last quoted words meant more than half the qualified electors of the State. But as the difficulty of determining the exact number of those entitled to vote in the State was evident, one of the Justices in the former case defined the constitutional expression as meaning practically "that substantial number who vote at State elections and the number of whose votes is officially returned by sworn officers, into the office of the Secretary of State." And in the later case the Court declared that the question was not one of constitutional construction—for the words were plain—but of evidence—presumably as to what vote was cast and what should be taken as "practically" representing the total number of the State's electors.

The opinion in In Re Todd goes very thoroughly into the reasoning of these cases and rejects their conclusion as to the majority required. The majority of the Court in these cases, it says, assume that there is a definite policy against adopting an amendment to the Constitution by less than a majority of all the electors of the State. The majority opinion in In Re Denny even declares that one would expect a provision in the Constitution embodying such a policy. The Court, however, declares this assumption without foundation. "At the time of the adoption of the present constitution there was nothing in the Federal or State Constitutions to suggest a constitutional policy of requiring the assent of a majority of all qualified electors in order to amend either constitution. In fact, there was no provision whatever in the first State constitution which required proposed amendments to be submitted to electors for ratification."

This contention is reinforced, according to the opinion, by an examination of the terms of the legislative act which provided the procedure for the submission of the present constitution to the people. These provisions are set out in full, and the opinion goes on to make the following comment: "We know that the voters of Indiana voted at a political election on the first Monday of August, 1851; and that the 'inspectors and judges of elections in the several townships in this State' conducted these elections as well as the election for the adoption or rejection of the proposed constitution. Yet the votes cast in the political election were not considered in determining whether a majority of all the votes were given in favor of the adoption of the present Constitution. In short, under the legislative act of submission the proposed Constitution became the present Constitution of Indiana because a majority of the votes polled for and against the adoption of

the Constitution . . .were given in favor of its adoption."

With the historical background thus settled, the Court then goes fully into the construction given these vital phrases by the majority in these two cases and proceeds to reject them. The argument is lengthy and it is impossible to brief it here. The Court adopts as controlling the reasoning and conclusions of the Court in the City of South Bend vs. Lewis (138 Ind. 586). The first of these conclusions is that "where a measure is proposed to the people, and its adoption made to depend on a vote of the majority, those who do not vote are considered as acquiescing in the result declared by those who do vote, even though those voting constitute a minority of those entitled to vote." And the third conclusion is that "where, at a general election, a proposition is submitted to the voters, the result of the vote on the proposition will be determined by the votes cast for and against it, in the absence of a provision in the law, under which it is submitted, to the contrary."

The court then quotes the amendment provisions of the present Constitution and finds no requirement that an amendment be submitted at a general election. It declares that in the absence of such a constitutional requirement, the General Assembly cannot "by providing for submission at such a time, overturn the results of the voters' decision on the adoption of an amendment by requiring such adoption to depend on the vote on political candidates. In short, the effect of omitting any reference to a general election is to treat the submission of a proposed amendment as a separate and distinct election, even though the submission be on the day of a general election and even though the machinery at the general election be used to poll, canvass and return the votes cast in the election on the amendment."

"We have already indicated," the opinion continues, "that, in our opinion, 'electors of the State' is not used in Article XVI to designate the persons to compose a group a majority of the members of which must approve a proposed amendment in order for it to become a part of the Constitution. The words merely designate the part of our political organization to which the question ultimately must be referred, i. e., the people as contrasted with some agency such as the General Assembly or a constitutional convention. And since there is an absence of any language which requires a majority of all 'persons possessed of the legal qualifications entitling them to vote' or a majority of all votes cast at a general election we believe the submission clause falls within the first and third propositions of Judge Dailey. . . Our conclusion is that under the submission provisions of Sections 1 and 2 a proposed amendment becomes a part of the Constitution if it receives a majority of the votes cast for or against its adoption, and this is true whether such amendment is submitted at a special election or at the time of a general election."

The various proposals made on the subject in the Constitutional Convention are examined and are found, in the Court's opinion, to confirm the conclusion above reached. This conclusion apparently makes an amendment of the Constitution much easier than heretofore. On this important point the Court says that "we recognize that it is sound policy to discourage the making of hasty and inadequately considered changes in our Constitution. But that policy is made effective by the requirement in Article XVI that proposed amendments must be approved by a majority of all the members of two General Assemblies. We also recognize the fundamental soundness of the policy of submitting all proposals to change the Constitution to popular vote, but that policy is not violated by a construction of Article XVI which preserves the right of the qualified voters of the State to adopt or reject proposed amendments to the Constitution but leaves the decision with the majority of those qualified voters who participate in the voting. Progress in popular government should not be at the mercy of those who have no interest in the problems of government."

Chief Justice Fansler filed a dissenting opinion which we are unable to comment on because of lack of space. The decision is widely hailed as a victory for the cause of higher legal standards, and President Loftin of the American Bar Association and other leaders in the fight for improved admission requirements have wired their congratulations to the officers of the Indiana Bar Association.

Addenda and Correction

MR. JOHN HANNA asks that the following references be added to the Bibliography on Reorganizations printed on pages 77 and 78 of the February issue, at the end of the article on "Corporate Reorganizations Under the Bankruptcy Act."

Gerdes, Constitutionality of Section 77B of the Bankruptcy Act (1934) 12 N. Y. Law Q. Rev. 196.

Buscheck, A. Formula for the Judicial Reorganization of Public Service Corporations, (1932) 32 Col. L. Rev. 964.

Kreft, Powers of Congress Under the Constitution Over Debtor and Creditor Affairs, (1931) 6 J. Nat. Ass'n Ref. in Bktcy. 11.

Rohrlich, Creditor Control of Corporations, (1933) 19 Corn. L. Q. 35.

Note No. 6 on page 81 of the February issue of the JOURNAL was incomplete as printed. It should have read as follows: "See in re Bradford (D. C. Md. Sept. 19, 1934) 7 Fed. Supp. 665, holding the stay provisions (subsection(s) (7)) unconstitutional."

Washington Letter: Work Relief Bill—R. F. C. Extension—Baby Bonds—Unifying Transportation Supervision—Plugging the Oil Leak

Washington, D. C.,
February 23, 1935.

CONSTITUTIONAL objections were raised to the $4,880,000,000 Work-Relief Bill (H. J. Res. 117) which was passed by the House January 24th with only minor amendments, but which seems to have fallen on evil days in the Senate. However, they could hardly be of much consequence in any event since there appears to be no way of testing in the courts the constitutionality of such an act as a whole in view of the Supreme Court's ruling in 1923 in the case of Frothingham v. Mellon, 262 U. S. 447, 448, 486. In that case the Court held that a suit by an individual, as a past and future federal taxpayer, to restrain the enforcement of an act of Congress authorizing appropriations of public money upon the ground that the act is invalid, cannot be entertained in equity. The gist of the Court's reasoning is indicated by its statement at p. 488 that, "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional." Some of the committee members, it seems, feel, as a matter of policy, that no one man in any government should be given a "blank check" of such enormous possibilities.

R. F. C. Extended Two Years

The existence of the Reconstruction Finance Corporation was due to expire February 1, 1935. The day before that the bill extending its life two years became a law. The Act added five years to the final date of maturity to which

loans may be made by the Corporation, thus extending such date to 1945.

The authority for industrial loans was liberalized by permitting them to be made upon such security as in the judgment of the board would reasonably assure repayment of the loans; whereas formerly it was provided that they should be made upon adequate security. To this expression the courts might give a rigid or conservative interpretation. Provision was made for loans to institutions financing electrical appliances, both for rural and urban uses. Another provision liberalized aid to institutions lending money on real estate mortgages. It was hoped that this will assist in reviving real estate values and construction activities.

"Baby Bonds"

The recent law providing small bonds for small investors was passed in the form of an amendment to the Second Liberty Loan Act of 1917. That act had provided the Government might issue bonds up to the amount of $28,000,000,000. But when any of those bonds were retired no others might be issued in their place. At the time the Senate passed the "baby bond" amendment, January 30th of this year, there remained within the old limitation the opportunity of issuing only about $2,300,000,000 more Government bonds. This margin would have been only $700,000,000 after the contemplated refinancing of the Liberty bonds to be due April 15th.

The style of the limitation was changed by the amendment so that there might not be outstanding at any time more than the amount of the new limitation, $25,000,000,000. But as some of the bonds will be retired others may be issued, so long as the total is at all times kept within the limit stated. The practical result, therefore, is that the Government has prepared for a possible issuance of about $12,000,000,000 of additional bonds, since the amount currently outstanding was approximately $13,000,000,000.

A point of interest developed during the discussion of this measure was that the total limit beyond which the Government has no authority to borrow money is now $45,000,000,000, which consists of the above discussed 25 billion and a $20,000,000,000 limitation as the combined amount of certificates of indebtedness and of Treasury bills and notes which at any time may be outstanding.

There does not appear to be any limit on the issuance of this type of bond other than the $12,000,000,000 above shown which would be required to bring the Government's total bonds outstanding up to $25,000,000,000. It is understood that the plan is to issue now whatever amount the market will absorb. The bonds will range in denominations from $25 to $10,000, and no person will be permitted to buy during one year more than $10,000 worth.

Instead of paying interest on the par value of the bonds, the Government will sell them at a discount, a $100 bond for around $75, which would yield the investor 2 or 3 per cent. The bonds may not be exchanged for cash until after 60 days from their issuance; but then the holders will be paid upon demand the equivalent of interest on the amount actually invested. The presses are now busy printing these bonds and it is expected they will be ready for the market March 1st.

Unifying Transportation Supervision

The President on January 31st transmitted to Congress the report of the Federal Aviation Commission which he had appointed last summer. He invited attention to the comprehensive surveys made and summarized its work by saying that "the Commission has made a diligent study of the broad subject of aviation conditions here and elsewhere, and emphasizes the excellent American progress in this new form of transportation. The Commission has also studied problems of national defense, of procurement policies, and of the extension of air-transport services."

In his transmittal message, the President indicated it was becoming "more and more apparent that the Government of the United States should bring about a consolidation of its methods of supervision over all forms of transportation." He stated that "At a later date I shall ask the Congress for general legislation centralizing the supervision of air and water and highway transportation with adjustments of our present methods of organization in order to meet new and additional responsibilities."

The Commission's suggestion "that the Interstate Commerce Commission be given temporarily the power to lower or increase air-mail rates as warranted in their judgment after full investigation," met with executive approval, "provided always that the grant of this duty to the Interstate Commerce Commission be subject to provisions against unreasonable profits by any private carrier."

In respect to general supervision over air commerce "during this temporary period," the President did not agree with the Commission. He said, "The Commission further recommends the creation of a temporary Air Commerce Commission. In this recommendation I am unable to concur. I believe that we should avoid the multiplication of separate regulatory agencies in the field of transportation. Therefore, in the interim before a permanent consolidated agency is created or designated over transportation as a whole, a division of the Interstate Commerce Commission can well serve the needs of air transportation."

Plugging the Oil Leak

On January 22nd the Senate passed the Connally bill (S. 1190). Upon Senator Tom Connally, the proponent of the measure, fell the chief burden of undertaking to show why "the Congress

(*Continued on page* 185)

THE DREAM OF A NEW LEGAL PROFESSION FOR AMERICA

Some Hazardous Speculations as to Possible Consequences of the Present Rapid Fermentation in the Laboratory of the Lawyers and the Law — The New Lawyer Will Accept and Understand the Machinery of Administrative Law—He Will Be a More Flexible and Facile Personality—The Law Will Rejoin Its Old Companions, Literature, History and the Arts, etc.*

By James Grafton Rogers
Dean of the Law School, University of Colorado

THERE are a series of events taking place in connection with the legal profession in the United States which seem likely to alter profoundly the profession, the law schools and some deep and subtle ways of thinking among lawyers. It seems worth while to estimate them a little. The political excitement during the great economic disaster of the last five years is not a critical factor in any of these events. The political emotion has at most revealed and to some small degree emphasized currents which are manifestly deeper and more enduring than any crisis.

The events referred to fall in several different groups. In the first place, we see now practically established in the United States certain requirements for minimum legal education known as the American Bar standards. These standards contradict, defy and discard the traditions and conditions of two hundred years of the profession in this country. In thirteen years, the whole situation concerning training for the bar has been fundamentally altered.

In the second place, the lawyers of this country are for the first time in their long history organizing themselves at a rapid rate. The consequences will be enormous.

In the third place, our legal methods and our ideas of the place and uses of law are being deeply revised. For the first time since the Revolution the law is deserting the tradition of Coke and Blackstone and adopting a series of methods and ideas altogether foreign to our Colonial fathers. This shift involves alterations in the whole field of education and theory.

In the fourth place, there are at least indications that the courts are beginning to abdicate their traditional powers as the guardians of constitutional limitations. The function of our courts as agents of statecraft as well as administrators of ordinary law has been a major influence in the whole history of the lawyers, the courts and legal doctrine in this country. If that function is materially diminished and the courts are removed from the old battleground of constitutional enforcement one of the most complicating factors in the administration of justice in America will evaporate. The effects on government will be, of course, vast but the effect on law proper and on lawyers, proper or otherwise, will be nearly as deep and important.

Anyone used to rambling in the legal history and literature of our own and other countries will have brought home to him some bold contrasts between law and the lawyers in America and elsewhere. He will notice, for one thing, how important and pervading has been the tradition of democracy in the American bench and bar. At least from the crest of the Jeffersonian Period, a little over a century ago, we have been committed to getting along with a legal profession, so loosely defined, so easily entered and so numerous in personnel that the contrast with other modern countries is surprising. We seem to have had four times as many lawyers per capita as any other nation. We have permitted until very recent years a license to almost anybody who made a showing of some law study. The rank and file of the bar has been characterized by the briefest and simplest sort of legal training. There was no requirement at all for other cultural or liberal education. The lawyers, until the last decade, were scarcely organized at all. Until after the Civil War no bar associations or lawyers' guilds worth stopping to describe were in existence. Only about 1890 did the states generally establish State Bar Associations. Those then established continued until after the Great War with the rarest exceptions to have little function except an annual meeting and to enroll a membership seldom exceeding thirty percent of the licensed lawyers. There has been no national organization except the American Bar Association. This at its crest of numerical strength enlisted perhaps a fifth of the lawyers. Most of the busy and successful lawyers paid little or no attention to bar organization of any type. They were indeed scornful of bar associations, at least until recent years. The societies they patronized, if any, were selective, not general. The same loose and democratic attitude prevailed and now prevails in the organization of nearly all the state courts. Judges have been elective, insecure in tenure, selected because of their personal campaigns, lightly dismissed and paid a bare living. All these facts are in great contrast with conditions in all the maturer European countries. In Great Britain, France and Germany almost the exact reverse of conditions occurs in each instance cited.

This loose democracy of ours in the law was no accident. It has been intentional, well seated in the

*Address delivered at the recent meeting of the Association of American Law Schools, held in Chicago on Dec. 27, 28 and 29.

public tradition and based on a defined philosophy. It has withstood much criticism and some sporadic attack for a century. The large, unselected democratic bar, the amateur elective judge and perhaps even the emphasis on jury trials and procedural technique which characterize America were all part of a deep-seated belief that government was an enemy of freedom, that the judicial processes must be kept popular and free from class influence, and that efficiency was a fault and not a virtue of government. All these ideas, in any real degree, are peculiarly American. They are the offspring of three chief parental influences,—Sir Edward Coke's aggrandizement of law as a shelter from tyranny, our Revolutionary Fathers' reasoned impediments set up against the dangers of a powerful government and the philosophy represented by that extraordinary frontier Virginian, Thomas Jefferson, who taught that the people should retain in their own hands the whole mechanism of justice.

Out of this philosophy grew a collateral idea or corrollary which has had and has today great sway over our thinking and our leading law schools. This has been the conviction in the great schools that their only possible contribution to the great sea of the profession must be a thin stream of highly trained lawyers. These men at least would be adequately equipped for their own welfare. The share the leading law schools could play in the general administration of justice must be found in these men's contributions as practitioners or teachers. The schools' output in influence and scholarship, even in printed publications, was addressed to the chosen few. The idea that more could be done than merely salt the sea was foreclosed. The consequences again have been significant. The graduates of the great schools have, on the whole, assumed little leadership in professional affairs. The influence of the great schools has been chiefly in what could be accomplished by a few teachers who settle here and there away from the shelter of their parent universities. The legal education offered in this country between the Civil War and the end of the century by one or two schools was perhaps the finest that has ever been afforded, but the output of such schools has scarcely flavored the mass of the bar. Our great experiment in equalitarianism in the profession has resulted in the most unequal and heterogeneous conditions that could be imagined.

In outlook and approach, the American lawyer has clung with interesting fidelity to the general philosophy of Coke and his interpreter Blackstone,—in short to series of ideas which had their formulation in mediaeval thought. England has revised nearly the whole of its legal thinking since Blackstone. The procedure he knew, the real property law he knew, the divisions between law and equity and even his public constitutional conceptions have gone by the board. Yet Blackstone remained the foundation for legal teaching in this country in most of the schools until our own generation. His outlook still governs our basic prejudices and ideals. His conceptions of sovereignty, his highly developed attitude toward real property law, his issue pleading and his faith in the reign of law as a check upon authority are today the lawyers' credo, consciously or unconsciously, throughout the American Bar.

Next to Blackstone and his disciples, the name of John Marshall has come most readily to the lips of the American lawyer. The reason is obvious. Marshall has represented another great strain in our legalistic thinking, namely, our preoccupation with the enforcement of the constitutional limitations and concepts which was entrusted to the judicial machinery. Until recently no meeting of lawyers has been complete without some ceremonial rehearsal of the grand events or doctrines of our governmental history. A great constitutional lawyer was the friendliest epithet the bar or the public could confer upon an American jurist. The duty of the courts in the performance of this function of constitutional interpretation was their proudest activity.

There is no impulse to criticize in what we are rehearsing. Blackstone and his thinking furnished for a vast and scattered country little given to systematic thinking an important and perhaps irreplaceable system of ideas on which to build some common and uniform legal process. The Constitution, in a country faced with climatic and social divergences so great that sectionalism has been a continual nightmare, has furnished not only a rallying point for allegience, but afforded a feeling of security and stability that has been and may yet be a precious inheritance. The Constitution has deserved no small part of the endless worship given it by the American lawyer. All this has nothing to do with our considerations here. Those considerations are that these two great systems of thought, represented in this hurried sketch by Blackstone and Marshall, have been the two testaments of the American lawyers. The suggestion that both these creeds are, for well or ill, fading in American polity is of importance. Administrative law and its family of ideas connected with the increase of effective and centralized government bid fair to occupy the new horizon.

All that we have recounted is familiar. Little of it will be contested. We have retraced it only to make clear the contrast with the new events and concepts now invading the profession, willy nilly. Today twenty-five or twenty-six states have adopted standards for admission to the legal profession which will transform the training and preparation of the bar. These states with the standards in force now or prospectively shelter nearly seventy percent of the lawyers of the nation. It is evident that the remaining states without equivalent standards will be soon forced for their own protection to adopt the requirements. From the standpoint of bar organization, fifteen states have in effect some sort of so-called integrated or all inclusive bar organization. Others are on the verge of action. The results of the integration movement are startling to those of you who have observed the scheme on a large scale. The lawyers are for the first time aggressively intervening in the mechanism of justice. The American Bar Association has launched a long program aimed at ultimate organization of the whole bar on a national scale. The results may be slow, but the logical consequence is as clear as was the course of a similar development in the medical and engineering professions. All this has taken place in the law abruptly within thirteen years.

The more intangible changes have already been sufficiently suggested. The bar is year by year more involved in administrative law. The jury is day by day less significant in civil causes.

We are rapidly abandoning issue pleading and resorting to notice pleading. Real property law has receded from the center of the lawyers' stage. The Constitution is losing its sharpness of focus. No reaction seems likely to restore its earlier definition. We are ceasing to fear authoritarian government and are welcoming its intervention. Sir Edward Coke, William Blackstone, James Wilson, Thomas Jefferson and John Marshall must stir uneasily if death has not brought them more tolerance than they wore in life.

If all or any large part of what we have noted is valid, some consequences flow. My purpose here is merely to suggest and leave with you some speculations on what these consequences may be.

The first thought is that hereafter the emphasis of thought in legal education will not be on maximum but on minimum requirements. This trend is already evident in the structure of the Association of American Law Schools and in the work of the American Bar Association The test of a demand for energy or money in the future seems to me likely to be not whether it contributes to the top of profession but whether it serves the bottom. We seem to be abandoning the concept of democracy in the legal profession only to find we are serving it in one sense at least better than before.

The second thought is that a highly organized and close-knit bar means more contact, more demands and more co-operation between the profession and the schools than ever before. We shall see and are indeed seeing the bars demanding work from the schools, intervening in their organization and curricular problems, distinctly closer in sympathy and interests.

In the third place there will be fewer schools and better ones. This is the evident result in the medical profession.

In the next place, legal training will become more expensive as its scope widens, and the battle between academic and the apprentice training will result in various efforts to combine or separate the two while both are organized. Perhaps a graded bar and apprentice period may furnish a solution, as in Europe.

The aloofness of the great and old schools from bar matters will diminish as the spread of permissible training narrows, and these schools and their graduates will be much more enlisted in guild affairs.

We can expect great activity in the bar in the general administration of justice, its intervention in questions of court organization, selection of judges, dockets, court procedure, publications and so on. With funds and organization, this tendency is already noticeable in the integrated states. It is evident that the traditional conservatism of the bar seems to offer surprisingly little resistance to reform.

With minimal education standards established, much attention will be given to problems of character and professional suitability and background in admission matters. This means new questions for the schools.

The new regime will mean problems for the boys of small income and some sort of scholarship support will be organized on a large scale to open the profession to the abler poor boy and girl.

The American lawyer, who has been riding two different horses, one legal and the other political, one professional and the other public, will tend to concentrate on his professional interests and occupations.

The simplification of procedure, a better scheme for the selection and permanence of judges, the advance of equity into criminal law, the eclipse of the jury and other evident trends will be accelerated.

The lawyers will accept and understand the machinery of administrative law, will aid in devising machinery to remedy its present clumsy operation, and we may even see a separate or parallel system of administrative tribunals set up, instead of trying to call on judges trained in common law methods to adapt themselves to a system alien in spirit and method.

Some conflict between the public interests or other private interests and the purely guild interests of the lawyers as an economic craft are already in evidence and will of course occur more frequently as bar organization strengthens. Bankers and accountants have already been engaged in borderline warfare with a partly organized legal fraternity.

The lawyer who has been in this country somewhat of a rigid doctrinaire in the eyes of others will be a much more flexible and facile personality. The law will rejoin its old companions, literature, history and the arts.

The bar will be decidedly smaller, and the cost of litigation will increase but it will be speedier, less erratic, and more efficient.

So much for some hazardous speculations as to possible consequences of the present rapid fermentation in the laboratory of the lawyers and the law! I, for one, look forward with hope and no little excitement to the prospects of a new legal profession in America. My purpose has been, however, not so much to venture prophecies as to bring home the extent and the reality of changes which seem so rapid and portentous.

Committee on Communications Meets

The Standing Committee on Communications met in Chicago on February 18th. The program of work included a study of recent legislative, judicial and administrative developments in the field of Communications. Especial attention was given to a number of legislative recommendations recently made to Congress by the Federal Communications Commission.

Several questions were assigned to members of the Group for further research and report. In carrying forward its study program for the present year, the Committee will cooperate with various interested groups in the Communications field, and with the recently appointed special committee of the Section of Public Utility Law on Federal and State Regulation of Communication utilities.

Binder for Journal

THE WORLD COURT—AS THINGS NOW STAND

Significance of the Senate's Vote—History of Twelve Years of Effort to Secure American Adherence to Court Protocol—Senate's Reservations and Acceptance by Other States —Development of American Opinion—The Senate Debate of 1935—Explanation of the Result

By Manley O. Hudson
Bemis Professor of International Law, Harvard Law School

ON January 29, 1935, by a vote of 52 to 36, the Senate refused to give its consent by the necessary two-thirds vote to the ratification of the World Court Protocols by the United States. This action spells delay, but it does not mean final defeat. It does not bind even the Senate for all time to come. Yet for the time being the United States will continue to withhold its support from the Court.

Significance of the Senate's Vote

The United States is the only country in the world where an issue has been made of supporting the World Court. The rest of the world is not standing still, waiting for us to cooperate in creating or maintaining the institutions of international law and order. The Court exists, and it will continue to exist. It has the support today of sixty-one nations of the world. It has a record of successful functioning over a period of thirteen years, in some fifty international cases. It is now holding its 34th session at The Hague. Forty-two States have conferred upon it obligatory jurisdiction over their international disputes of a legal character, and 475 international instruments, listed in its annual reports, relate to its jurisdiction. The disappearance of the Court would have such tragic consequences, it would so dislocate the system of the world's treaty law, it would so disturb international relations, that it will not be contemplated. The Court will go on, and inevitably the United States will some day find a way of supporting it.

The Senate's refusal has significance, for the time being, as an indication of our national attitude in international affairs. It is a portent of our unwillingness or inability to share responsibility for some of the larger advances made in recent years. It indicates that to some extent the United States suffers from a paralysis which prevents us from keeping up with the procession. For these reasons, it is important that the whole legislative history of the World Court proposal should be known and understood.

Twelve Years of Effort

Twelve years have passed since President Harding proposed, on February 24, 1923, that the United States should adhere to the original Court Protocol of December 16, 1920, which established the Statute of the Court. This course was urged also by President Coolidge in his annual messages to Congress from 1923 to 1925. It was favored by a resolution of the House of Representatives, passed on March 3, 1925, by a vote of 302 to 28. After the matter had been debated in the country for almost three years, on January 27, 1926, the Senate gave its consent to our adherence by 76 votes to 17. This was done with five reservations, however. The substance of four of the reservations had been proposed by Mr. Charles E. Hughes, who was then Secretary of State and who was later to become a judge of the World Court; but the Senate added a fifth reservation, of two parts, concerning advisory opinions. Apprehension having been expressed in some quarters that the Court might give secret advisory opinions, the Senate stipulated that the Court should not abandon the practice it had already established, that is, the practice of giving advisory opinions only "publicly after due notice" and "after public hearing or opportunity for hearing given to any State concerned." A second part of the fifth reservation was designed to take account of the special position of the United States with respect to requests for advisory opinions, because we are not represented in the Assembly and Council of the League of Nations, from which bodies requests must emanate. It was stipulated that the Court should not "without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

Acceptance of Reservations by Other States

The Senate's resolution also stipulated that the 1920 Court Protocol should not be signed until the parties to that Protocol had "indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings." The Secretary of State promptly communicated the text of the resolution to other Governments, and to the Secretary General of the League of Nations. When the matter was raised in the Council of the League of Nations, it was thought that the second part of the Senate's fifth reservation was susceptible of "an interpretation which would hamper the work of the Council," though it was "not clear" that the resolution "was intended to bear any such meaning." The Council feared that the matter could not be handled by separate exchange of notes, and it suggested a conference of the representatives of various Governments, including that of the United States.

A conference of the signatories of the original Court Protocol was held at Geneva in September, 1926, but the United States refused to be represented. Mr. Frank B. Kellogg, then Secretary of State and later to become a judge of the World Court, asserted that the Senate's reservations were

"plain and unequivocal," and that he had no authority to interpret them. The Conference of Signatories therefore felt itself in the dark as to what the United States really wanted; the delegates pored over our *Congressional Record* to discover what the Senate had in mind, without much success. They accepted the first four reservations and the first part of the fifth, but as to the second part of the fifth reservation they set certain conditions for acceptance. In consequence, the plan proposed by the Conference for accepting the United States' reservations was not agreed to by the United States. Most of the other Governments declined to accept the United States' reservations except on the basis of that plan.

Then came two and one-half years of waiting. In February, 1929, soon after the signature of the Briand-Kellogg Pact, Secretary Kellogg reopened the negotiations. In suggesting "an informal exchange of views," he stated that "there seems to be but little difference regarding the substance" of the rights and interests of the United States. In March, 1929, Mr. Elihu Root, who had participated in drafting the Court's Statute in 1920, accepted an invitation from the Council of the League of Nations to serve on a Committee of Jurists to which the problem was referred. Mr. Root presented to this Committee of Jurists a proposal which dealt with "the manner in which shall be made known whether the United States claims an interest and gives or withholds its consent" to the Court's rendering an advisory opinion. Mr. Root's proposals led the Committee of Jurists to agree upon a draft Protocol on the Accession of the United States, which was opened to signature at a second Conference of Signatories in Geneva, on September 14, 1929.

The 1929 Protocol on American Accession constitutes an out-and-out acceptance of the first four of the Senate's reservations, and of the first half of the fifth reservation. On this point, there can be no warranted doubt. It clearly constitutes also an acceptance of the second part of the Senate's fifth reservation "upon the terms and conditions set out," and these terms and conditions leave the United States adequately and abundantly protected in its special position. Mr. Root has explained that the United States can at any time prevent any request for an advisory opinion from being considered by the Court. Moreover, the United States can at any time denounce the whole scheme and withdraw from supporting the Court.

The 1929 Protocol was promptly approved by President Hoover and his Secretary of State, Mr. Henry L. Stimson. On December 9, 1929, by direction of President Hoover, three Court Protocols were signed on behalf of the United States—(1) the original Protocol of Signature of December 16, 1920; (2) the United States Accession Protocol, of 1929; and (3) the 1929 Protocol on Revision of the Court's Statute.

Then came another long delay. A year elapsed before President Hoover submitted the Protocols to the Senate, and until June 1, 1932, nothing was done in the Senate. On the latter date, Senators Fess and Walsh made a report for the Senate Committee on Foreign Relations, in which they demonstrated quite conclusively that the United States was completely protected in its objectives by the Protocol of 1929. The Senate took no action on this report.

Development of American Opinion

The subject was then relegated to the nominating conventions of the political parties, and the 1932 platforms of the two leading political parties were clear-cut in their pronouncements. The Democratic platform pronounced in favor of "adherence to the World Court with the pending reservations." The Republican platform sought for the United States "a voice in this institution, which would offer us a safer, more judicial and expeditious instrument" for settling "constantly recurring questions." The Socialist platform was likewise emphatic in supporting the World Court. The party platforms were clearly in line with a greatly preponderant public opinion, expressed in thousands of resolutions both previously and subsequently. Over many years, the National Grange, the American Federation of Labor, at times the American Legion, chambers of commerce, religious groups of all denominations and all faiths, and numerous state legislatures have voiced their insistence on support of the World Court. No other part of the population has so consistently supported the Court as the lawyers, and it might be assumed that the lawyers have some understanding of the matter. Led by the American Bar Association and the New York State Bar Association,[1] whenever and wherever it has taken a position on the question, the organized bar has favored adherence to the Court.[2]

The Senate Debate of 1935

Again, a long delay. On January 10, 1935, the Senate Committee on Foreign Relations made a favorable report on the subject, proposing a resolution of consent to the ratification of the three Court Protocols, "with the clear understanding of the United States" that the Court "shall not, over an objection by the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest." This repeated the second part of the Senate's fifth reservation of 1926, except that the words "over an objection by" were substituted for the words "without the consent of." President Roosevelt promptly put his influence behind the action of the Senate Committee; by a special message of January 16, 1935, he asked that "the Senate's consent be given in such form as not to defeat or delay the objective of adherence."

The Senate devoted two weeks to the debate, from January 14 to January 29. Senator Robinson ably led the fight for favorable action. Some Senators who favored a hypothetical international court opposed the real one. As on previous occasions, the two-thirds rule gave encouragement to reservations. Senators who announced that they intended to vote against the Court resolution proposed and supported reservations in an effort to make its form objectionable to the largest possible number of Senators.

The debate indicated progress in one direction.

1. For fifteen successive years, beginning in 1921, the New York State Bar Association has adopted resolutions favoring the Court.

2. In 1934, the American Bar Association published a pamphlet entitled "*In re* The World Court," reproducing or listing 150 resolutions on the World Court. The preface states that "so far as can be ascertained from published reports, in all of these years no bar association in the United States has adopted a resolution opposing American support of the Court."

Whereas in 1931 and 1932 there was a disposition of some people to say that the 1929 Protocol had not met the substance of the Senate's fifth reservation of 1926, there was little insistence on this point in 1935.

One amendment to the proposed resolution which was earnestly pressed attempted to place a restraint both on the President and the Senate in the future. It would have required each particular reference to the Court by the United States to be approved by the Senate by two-thirds vote. In supporting this amendment, Senator Norris expressed a fear that the United States might at some future date follow the example of most other States of the world by entering into general treaties giving the Court jurisdiction over certain classes of disputes. Of course the Senate cannot tie its hands for the future, nor can it deprive the President of any constitutional power; and it may be contended that because of its futility the amendment ought to have been accepted. It was proposed, however, as an "express condition and understanding" of adherence, and in this form it might have given future difficulty.

Some of the proposals made were too irrelevant to receive any considerable support; e.g., a reservation that "the code of law to be administered by the World Court shall not contain irregularities based on sex," and an amendment providing that the adherence should not "become or remain effective" while any State which is a party to the Court Protocols is "in arrears for a period of more than six months in respect of any payment due" the United States.

The Vote in the Senate

Two additions to the resolution as originally proposed were made by the Senate by majority vote, each of them reviving a paragraph out of the 1926 Senate Resolution. In its final form, the resolution voted on was as follows:

"*Whereas* the President, under date of December 10, 1930, transmitted to the Senate a communication, accompanied by a letter from the Secretary of State dated November 18, 1929, asking the favorable advice and consent of the Senate to adherence by the United States to the protocol of date December 16, 1920, of signature of the Statute for the Permanent Court of International Justice, the protocol of revision of the Statute of the Permanent Court of International Justice of date September 14, 1929, and the protocol of accession of the United States of America to the protocol of signature of the Statute of the Permanent Court of International Justice of date September 14, 1929, all of which are set out in the said message of the President dated December 10, 1930: Therefore be it

"*Resolved (two-thirds of the Senators present concurring)*, That the Senate advise and consent to the adherence by the United States to the said three protocols, the one of date December 16, 1920, and the other two each of date September 14, 1929 (without accepting or agreeing to the optional clause for compulsory jurisdiction), with the clear understanding of the United States that the Permanent Court of International Justice shall not, over an objection by the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

"*Resolved further*, That adherence to the said Protocols and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said Protocols and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

"*Resolved further*, as a part of this act of ratification, That the United States approve the protocol and statute hereinabove mentioned with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute."

On January 29 this resolution was defeated by 52 votes to 36. The Senate thus reversed the action which it had taken by 75 votes to 17 in 1926. Seven Senators who voted in favor of supporting the Court in 1926 voted against the resolution in 1935 —Senators Gerry (R. I.), Metcalf (R.I.), Norbeck (So. Dak.), Norris (Neb.), Smith (S. C.), Trammell (Fla.), Wheeler (Mont.)—and the resolution failed by seven votes.

The result was a repudiation of the proposals of Presidents Harding, Coolidge, Hoover and Roosevelt and of Secretaries of State Hughes, Kellogg, Stimson and Hull. It came as a shock to many people who had confidently expected favorable action, though it was welcomed by the senders of some 200,000 telegrams who at the eleventh hour had been stirred to express opposition to the Court.

Explanation of the Result

The explanation of this result is not to be found within the issue itself. By becoming a party to the Court Protocols, the United States would confer no jurisdiction on the Court to deal with its own disputes. It has never been proposed that the United States should sign the Optional Clause giving the Court obligatory jurisdiction. The sole obligation which the United States would assume by ratifying the Court Protocols is the obligation to contribute a fair share of the Court's expenses, and even the question of what is a fair share is to rest with our own Congress. It would probably be about $80,000 a year at present rates. Even this obligation could be ended at any time by a withdrawal by the United States. Hence, the proposed action would obligate the United States only to the extent of paying what it wishes to pay and only as long as it wishes to pay, to help meet the expenses of the Court. This limited effect of ratification was not sufficiently stressed in the Senate debate, and the speeches of many Senators were based upon the hypothesis that the United States was actually conferring jurisdiction on the Court.

It was not generally disputed that the Court is a useful institution. Only one of its forty-eight judgments and opinions was attacked, and the argument of the leader of this attack merely came down to saying that as a judge he would have been in a minority where he would have had good company. There was some opposition to advisory opinions, but without any appraisal of the usefulness of the twenty-five advisory opinions which the Court has given to date and with little appreciation of the role of advisory opinions in the history of Anglo-American jurisprudence.

The explanation of the result must be sought in reasons which had little to do with the problem of the Court. Great emphasis has been placed on transitory events, such as the parliamentary tactics followed in the Senate and the last-minute protest of people who were aroused by misrepresentation in radio broadcasts. These factors do not explain the hostile action of various State legislatures, however, and it now seems probable that, even with different tactics, a favorable vote could not have been secured at any time during January, 1935. The transitory

events were enacted on a stage which was set in advance.

The Court resolution was defeated not by arguments but by attitudes.

There is first an attitude, lingering with some people after these twenty years, of resentment concerning the World War. It seems to be thought that the United States was merely used in the War to pull other peoples' chestnuts out of the fire. Some people still sigh, with Mr. Walter Lippman, for another world which has never fought a World War and which therefore does not have to accept its changes or wrestle with its legacies.

Then there is still an attitude in some quarters of vigorous opposition to the League of Nations. This attitude is not the result of the outcome of the Manchurian incident, it is not based upon the record of the League, it takes no account of the extensive cooperation of the United States at Geneva, it is not related to the popular desire for the maintenance of peace. It is in part a survival from fifteen years ago, in part an expression of a nationalism which dictatorships throughout the world have not tended to dissipate. The attempt made in this country to divorce the Court from the League has not succeeded, and in spite of the clearest provisions in the protocols themselves it was said that support of the Court meant legal commitments to the League.

There is also an attitude of hostility to Europe, fanned in recent months by the default of certain European Governments in payments on debts owed the United States. The failure of the Disarmament Conference, and the fact that large armaments are being maintained by States in default, have created a deafness to all arguments which may be made by those States in defense of their positions. Hence, the defeat of the Court resolution was viewed as a slap back at Europe, and as such it was hailed with satisfaction in some quarters. If a single reason is to be found for the unfavorable vote in the Senate, that reason must be the default on the debts.

On this stage, it served little purpose to recall the pronouncements of all the Presidents of the United States since McKinley. With a minority, a policy followed by the United States with some consistency for fifty years yielded to a policy enunciated during the Napoleonic Wars of more than a century ago.

Yet any student of history will be disposed to take it as a matter of course that if the World Court goes on, if it succeeds even measurably in its mission, a way will eventually be found by which the United States will give it support. The Geneva Red Cross Convention of 1864 was not accepted by the United States until 1882. Minorities as such do not permanently prevail in America.

DEPARTMENT OF CURRENT LEGISLATION

The National Housing Act

BY GANSON PURCELL
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ON May 14, 1934, the President addressed to Congress a message urging the enactment of legislation to "alleviate distress and to raise perceptibly the standards of good living for many of our families throughout the land" by the adoption of a program embodying four principal divisions: (1) the encouragement of modernization, repair and new construction of homes, primarily, and also of commercial and industrial structures, (2) insurance on the mutual plan of mortgages on real property as a means to stimulate the advancement of reasonable and sound credit to home owners, (3) the incorporation of mortgage associations under Federal supervision to increase the amount of mortgage funds in certain localities where interest rates are unduly high and to assist in the improvement of the mortgage market, and (4) the issuance of share, certificate and deposit accounts in building and loan and savings and loan institutions similar to the insurance of bank deposits. On June 27, scarcely more than a month later, the National Housing Act (Public No. 479), embodying in substantial form this suggested program, was signed by the President and became law.

When reported to the House and Senate, the bills introduced by Chairmen Steagall and Fletcher of the House and Senate Banking and Currency committees at the time of the transmission of the President's message (H. R. 9620 and S. 3603) differed in several respects. As originally introduced, the bills contemplated the establishment of two new Government corporations, one to administer the first two divisions of the President's suggested program, and the other, under the direction of the Federal Home Loan Bank Board, to undertake the necessary work in connnection with the insurance of building and loan and savings and loan institutions. The House bill as reported retained these two administrative corporations, but the House committee failed to report any provisions with respect to the establishment of mortgage associations. Such a provision, however, was adopted on the floor of the House as an amendment to the bill, and was contained in it as passed. The Senate bill

was later reintroduced and reported by the committee (S. 3794) in a largely rewritten form. This bill, with a very few changes, became the form of the Act as it passed the House and Senate and was signed by the President. The principal substantive change made by the new bill over the old was the substitution of a Federal Housing Administration for the corporation established to administer the first and second points of the President's program, the Administration, under the direction of a Federal Housing Administrator, to carry out all necessary functions with respect to the first three divisions of the program. Following the President's suggestion, the Act is divided into four principal parts, each contained in a separate title, and certain amendments to existing law are made under the heading of a fifth title.

Title I of the Act, dealing with housing renovation and modernization, is intended to encourage private capital investment. It provides that financial institutions which make loans subsequent to the date of enactment of the Act and prior to January 1, 1936, or such earlier date as the President may fix by proclamation, for the purpose of financing alterations, repairs and improvements upon real property, may be insured by the Administrator up to 20 per cent of the total of such loans, and that the Administrator may also make loans upon the security of the obligations thus insured up to the full face value of such obligations. The aggregate insurance is not to exceed $200,000,000, so that the maximum amount of such loans by financial institutions which will be eligible for insurance will not exceed $1,000,000,000. In addition, no insurance may be granted with respect to any obligation representing any such loan if the face amount thereof exceeds $2,000.

Title II establishes a system of mutual mortgage insurance under which first mortgages on residential property which are amortized may be insured if the principal obligation of any such mortgage does not exceed $16,000, and in any case does not exceed 80 per cent of the appraised value of the property at the date of execution of the mortgage. The aggregate limitation on the principal obligation of mortgages insured (a limitation which may be set aside with the approval of the President), is set at $1,000,000,000 in mortgages "on property and low-cost housing projects existing on the date of the enactment of this Act," and a similar amount in mortgages "on property and low-cost housing projects constructed after the passage of this Act." A mortgage must be offered for insurance within a year from the date of its execution. To allow for construction loans, the Administrator is given power to make a commitment for the insurance of a mortgage prior to the date of its execution or the payment of money to the mortgagor. This provision should encourage the construction of new homes by permitting the insurance of the mortgage to be arranged for in advance of construction.

The provisions of title II represent another important change recommended by the Senate Committee on Banking and Currency in that the extensive detail with which the insurance plan is here set out takes the place of a single section couched in very general terms contained in the original bill (S. 3603). Mortgages to be eligible for insurance must be amortized and comply with such further requirements as the Administrator may prescribe with respect to maturities, the application of periodic payments to the amortization of principal, and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other similar matters. The interest rate on such mortgages, however, is not to exceed 5 per cent per annum on the principal obligation outstanding at any time unless the Administrator finds that in certain areas or under special circumstances the mortgage market demands a higher rate, in which event not to exceed 6 per cent may be charged.

The premium charge for insurance of mortgages, which is to be determined in accordance with the risk involved, is not to be less than ½ of 1 per cent nor more than 1 per cent of the original face value of the mortgage and is to be payable annually in advance by the mortgagee.

A revolving fund is created for the payment of the insurance called the Mutual Mortgage Insurance Fund and is put under the administration of the Administrator.

The insurance is paid to the insured mortgagee after he has acquired the property by foreclosure or by default. He is required to convey his title to the Administrator and to assign to him his claims against the mortgagor, including claims for the cost of foreclosure, and it would seem to include a claim for a deficiency judgment and for interest due. He is not paid in money but receives debentures with a total face value equal to the principal of the mortgage plus any payments made by him for taxes and insurance, and a certificate of claim, described below. These debentures bear interest at a rate fixed by the Administrator but not over 3 per cent, and mature within 3 years. They are to be paid only from the Fund, except that the debentures issued on mortgages insured prior to July 1, 1937, are fully guaranteed as to principal and interest by the United States.

Congress solves the difficult problem of the taxation of these debentures in the hands of individuals by making them subject "only to such Federal, State, and local taxes as the mortgages in exchange for which they are issued would be subject to in the hands of the holder of the debentures." This would mean that the debenture holder will have all the difficulties of determining the tax jurisdiction with respect to different taxes to which the mortgage holder is now subject. If, however, some means is not provided for registering the debenture in the States in which the original mortgage was situated, and requiring reregistration by subsequent holders, the tax authorities of that State will find it hard to trace the owners of the debentures.

Congress has dealt in an interesting way with other amounts which the mortgagee would be entitled to receive if the "mortgagor had redeemed the property and paid in full all obligations under the mortgage and those arising out of the foreclosure proceedings." These apparently would include interest due and unpaid if it were to be added to the principal of the mortgage. The certificates of claim issued to cover these amounts provide for "an increment at the rate of 3 per cent per annum." The certificates are not paid from the Fund. If the Administrator, however, on the sale of property covered by the mortgage with respect to

which a certificate is issued, receives an amount in excess of the debentures and his expenses, he will then pay the certificate holder the excess up to the total payable under the certificate and the balance, if any, will go to the mortgagor of the property. Thus there is protection for the equity of the debtor in an excess value arising from any subsequent increase in value of the property.

The assets of the fund are not lumped but the Administrator is required to classify mortgages into groups which have "substantially similar risk characteristics and have similar maturity dates." The premiums received for the insurance of mortgages in each group and earnings of the assets of the group account are credited "to the account of the group to which the mortgage is assigned," and the expenses and the outlay, including the payments of debentures and expenses, are charged to the account of the group. Also receipts received from the property covered by the mortgage are credited to the group account, receipts which would apparently include rental and claims assigned in connection therewith and recoveries on deficiency judgments.

The operation of the group system may give an advantage to the mortgage debtor in the better classes of risks. Whenever a credit balance in any group account exceeds the remaining unpaid principal of the then outstanding mortgages in the group by an amount equal to 10 per cent of the total premium payments credited to the account, the Administrator shall terminate the insurance as to the group and pay to the mortgagees for the benefit of the mortgagors a sum sufficient to pay the mortgages in full and shall transfer the remainder to the credit balance of the reinsurance account, which will be at least 10 per cent of total premiums paid. The Administrator is also required to terminate the insurance in respect of groups of mortgages whose credit balance "fails to exceed, until the final year prior to the maturity date of the mortgages" in the group, the principal of the outstanding mortgages by an amount equal to 10 per cent of the total premium payments credited to the account. He then transfers to the reinsurance account a sum equal to 10 per cent of the total premium payments and distributes the remainder of the credit balance pro rata to the mortgagees in the group for the benefit of their mortgagors. Thus in such groups it would appear that the Administrator reviews the financial position of the group a year previous to its natural ending and at that time distributes the assets of the group fund among the insured mortgagees. By this procedure each insured mortgagee, at the termination of the insurance would get his pro rata share of the assets. It eliminates the danger that an individual mortgagee and his mortgagor would combine to hasten foreclosure or settlement and so permit the mortgagee who applies early to secure full payment from the Fund, with the result that the remaining mortgagees in case of later defaults would get only a part of their claims. However, the mortgage debt will be reduced by the amount of the payment, so that the value of the security on the remainder will be enhanced, making payment by the mortgagor more probable. Those fortunate mortgagee members of the group who had acquired debentures prior to the termination would be secured, since the amount of their debentures would already have been charged up against the assets of a fund and an amount sufficient to cover them presumably set aside.

The classification provisions do not affect the value of the insurance policy up to the first of July, 1937, the period during which the Federal guarantee takes effect, so that there will be ample experience on which to base amendments to the Act without affecting the real security of the insured persons.

A general reinsurance account is set up to cover charges against the group accounts in excess of the assets of the account. This account is composed of $10,000,000 paid in from Government money and 10 per cent of the total premium payments of any group.

It is also provided that the Administrator may insure first mortgages covering property held by Federal or State instrumentalities, private limited dividend corporations, and municipal corporate instrumentalities of one or more States formed for the purpose of providing housing for persons of low income which are regulated or restricted by law or by the Administrator as to rents, charges, capital structure, rate of return, or methods of operation. Such mortgages need not conform to the eligibility requirements as in the case of other mortgages insured under title II, but are to contain such terms, conditions and provisions as are satisfactory to the Administrator. The limit on such insurance for any one project is $10,000,000. Property taken over is to be operated or sold by the Administrator, who is also authorized to prosecute or compromise claims transferred to him by a mortgagee.

Title III of the Act provides for the incorporation of national mortgage associations, each of which is to have a capital of not less than $5,000,000, which are authorized to purchase and sell first mortgages and to borrow money through the issuance of securities up to 10 times the par value of their outstanding capital stock, but in no event in excess of the current face value of mortgages which they hold and which are insured under the provisions of title II, plus cash on hand and Government obligations. The Administrator has power to provide for periodic examination of the association, and may order their liquidation for non-compliance with the Act, or rules or regulations made under it, for impairment of capital, or for conducting its affairs "in an unsafe and unbusinesslike manner."

An interesting provision in title III is that contained in section 307 relating to the taxation of mortgage associations, which is in effect a new variant on the "comparative" formula contained in section 5219 of the Revised Statutes, relating to State taxation of national banks. In this provision, national mortgage associations are made subject to State taxation to the same extent as State-chartered corporations, except that such taxation shall not be "at a greater rate than that imposed by such State on corporations, domestic or foreign, engaged in similar business within the State." The necessity of finding the element of "competition" on the part of the State-chartered institution as a basis of classification is here attempted to be eliminated by the substitution of a more basically factual criterion of the nature of the business.

Funds for carrying out the provisions of the

first three titles of the Act are to be made available to the Administrator by the Reconstruction Finance Corporation, or, in lieu thereof, the President may provide such funds or any part thereof by allotment to the Administrator from any funds made available to the President for emergency purposes. The Administrator is also required to make an annual report of his activities to the Congress.

Title IV of the Act provides for the creation of the Federal Savings and Loan Insurance Corporation of which the members of the Federal Home Loan Bank Board are trustees. The stock of the Corporation is $100,000,000, to be subscribed for by the Home Owners' Loan Corporation and paid for with its bonds. The Corporation is authorized to insure accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District or Territory in which they are chartered or organized, and is required to insure accounts of Federal savings and loan associations established under authority of the Home Owners' Loan Act of 1933, up to 80 per cent of the full withdrawable or repurchaseable value of the accounts of the members of such institutions, with a limitation upon insurance to any such member of $5,000. Federal savings and loan associations must apply immediately for insurance; other eligible institutions may apply at any time. The fund for the payment of losses is derived from an insurance premium to be paid by each institution accepted for insurance in an amount equal to ¼ of 1 per cent of the total amount of its insured accounts, plus any of its creditor obligations. The premium is to be paid annually until such time as the corporation has established a reserve fund equal to 5 per cent of all insured accounts and creditor obligations of all insured institutions. Thereafter premium payment is suspended unless the reserve falls below such 5 per cent, in which case it is to be resumed until the reserve is restored to the required amount. The corporation is also authorized to make additional assessments against the insured institutions of not to exceed in any one year ¼ of 1 per cent of the total accounts and creditor obligations, for the purpose of making up the amount of all losses and expenses of the corporation. The corporation must examine applicants and may report applications if it finds that the capital of the applicant institutions is impaired or their management unsafe. Accepted institutions must pay an admission fee fixed by the corporation and based on the applicant's reserve fund. Any institution may withdraw its insurance or the corporation may terminate the insurance of any institution for violation of the Act.

In order to round out the program contained in the first four titles of the Act, various amendments to existing law are made in title V. Among these are the following: a new section 10a is inserted in the Federal Home Loan Bank Act authorizing the Home Loan banks to make advances, until July 1, 1936, to their members to enable them to make loans for home repair, improvement and alteration, such advances to be made only upon security of notes "representing obligations incurred pursuant to, and insurable under," title I of the National Housing Act. The Farm Credit Act of 1933 is amended to permit production credit associations to make loans on homes for improvements and to avail themselves of the benefits of insurance under title I of the National Housing Act. Section 24 of the Federal Reserve Act (limiting the amount of loans on real estate by national banks) is amended so as to remove all loans secured by real estate insured under title II of this Act from the limitations contained in that section, as to the amount of the loan in relation to the actual value of the real estate and as to the 5-year limit on the term of such loans. Section 24 is further amended to class as ordinary commercial loans, loans with six month maturities made to finance the construction of residences or farm buildings. No national bank may invest more than 50% of its paid in and unimpaired capital in such loans. Notes representing such loans are made eligible for discount under section 13 of the Federal Reserve Act if responsible arrangements have been made for permanent financing in connection with the loan upon completion of the building. The authority of the Home Owners' Loan Corporation to issue bonds to obtain funds for carrying out the provisions of the Act or for the redemption of outstanding bonds is increased from $2,000,000,000 to $3,000,000,000, and the authority of the Corporation under section 4 (m) to make advances for home renovation is increased from $200,000,000 to $300,000,000. The definitions of the term "home mortgage" contained in section 2(6) of the Federal Home Loan Bank Act, and in section 2(c) of the Home Owners' Loan Act of 1933, are amended (Sec. 507) so as to make them conform to the definition employed in section 201(a) of the National Housing Act which defines a mortgage as one upon real estate, in fee simple, or on a leasehold (1) under lease for not less than 99 years which is renewable, or (2) under a lease having a period of not less than 50 years to run from the date the mortgage was executed; thus enabling the administrative agencies under the various Acts to deal satisfactorily with practices peculiar to certain localities in the country. Section 22 of the Interstate Commerce Act, as amended, is amended so as to permit carriers subject to that Act to give reduced rates for the transportation of commodities specified by the Interstate Commerce Commission which are shipped with the object of improving nationwide housing standards and providing employment and stimulating industry. (Sec. 511).

Lawyers on Strike

(From Chicago Bar Record, Dec.)

A few months ago the Cuban Bar Association ordered its members not to appear in any of the new "urgency courts" which were created to combat terrorism. A little later the lawyers of Roumania decided to go on a strike against a new tax upon their profession.

Not to be outdone by the bar, a group of judges in London adjourned court recently, an hour and one-half before the usual time, to confer and protest against their burdensome hours and conditions of work.

Are these stories to be taken as signs that a new kind of bar integration is on the way which will adopt such devices of trade-unionism as the walk-out, closed shop and picketing? If so, we may enter the County Building some day and find a group of lawyers solemnly parading before the court-room of an unpopular judge, demanding his removal, with placards reading: "THIS JUDGE IS UNFAIR TO THE ORGANIZED BAR."

COOPERATION OF ATTORNEY AND EXPERT WITNESS

Some Practical Suggestions of Means of Making the Testimony of the Expert More Effective before Court and Jury — Need of Special Preparation by the Lawyer — Disastrous Results of Failure of Counsel to Examine His Own Expert Properly —Difference Between Success and Defeat May Depend on a Few Ideas Clearly Expressed

By Albert S. Osborn*

CASES are lost that should have been won because of lack of proper co-operation between technical witnesses and trial attorneys. Decisions against the facts are recorded because capable attorneys, even those with a wide general experience, are not technically qualified in a technical case they are trying. Many lawyers do not appreciate the necessity for co-operation with a qualified technical witness and do not understand that they need special preparation. These unfortunate and unnecessary decisions against the facts may result in cases relating to firearms and bullet identification, finger-prints, machinery and construction cases and other technical matters, but are perhaps most frequent in difficult cases involving, or wholly growing out of, a disputed document or a series of documents. These latter cases often are of great importance and wide interest, especially kidnaping, anonymous letter, extortion and will cases. The technically uninformed trial attorney in these cases may go his way and never know how much better his part could have been done.

One of the outstanding direct effects of technical unpreparedness in these cases is shown in attempted cross-examinations of adverse witnesses who are testifying against the facts. In many instances by only six, or even a less number of properly phrased questions, this incorrect, if not actually dishonest, testimony often can be shown to be just what it is, while long, bungling cross-examination may actually strengthen the testimony of unworthy witnesses. It is a sad experience for one qualified on a technical subject to see it mutilated by an unprepared attorney. Failure in these cases is, however, most often due, not to the pitiful failure of cross-examination, but failure to bring out in the most effective and convincing way the testimony of the lawyer's own technical witnesses.

Some of these things are taught in law schools but it would be well if they could be better taught. Attorneys who are to try cases, who are in effect American barristers, should be aided to realize more keenly that even an intelligent man cannot discuss intelligently a subject he does not understand. He should also know that he cannot learn all he ought to know of an important topic during a hurried conference the evening before he is to be called upon to show in court his ignorance or his knowledge of the subject under consideration. Competent patent attorneys seem to understand the necessity for technical preparation much better than attorneys in general practice. The competent attorney knows that the difference between defeat and success sometimes depends upon a few ideas clearly expressed in a few sentences. Patent cases no doubt are, as a rule, better prepared than many other classes of law cases.

As is well known, legal education lacks scientific training of any kind and many lawyers do not know how to take up and investigate a scientific problem and carry it through to a finish. The requirement of a previous course of study for lawyers including some scientific training should be universal. It is no doubt true also that the spirit of advocacy which impels one to attempt to establish a preconceived theory is a training that leads directly away from real scientific investigation and the scientific spirit. Many lawyers of this kind, some of them eminent as general attorneys in certain fields, seem to be unable to appraise the force of scientific evidence. Some of these men develop a quality of mind that will excuse anything. This weakness often is exposed in the midst of an important trial and a man shows, not only that he is ignorant of fundamental ideas and principles, but does not even know the words necessary to discuss a given subject.

The trial of a disputed document case differs in some important ways from most other trials. In the first place, it deals with a technical problem, and testimony on the subject, to be fully effective, must not only be correct but must be presented in the right way.

One of the first requirements on the attorney in these technical cases is, of course, the finding and testing of the technical witness he is to call. Error at this point, which naturally is mainly due to lack of technical knowledge, may be fatal. The attorney is entirely to blame for depending upon an unqualified or dishonest technical witness. Part of his preparation for trial should be the investigation of experts. If he calls an ignoramus or a presumptuous fakir it is his own fault.

Even the fully qualified and widely experienced expert witness naturally hesitates to make suggestions to able and experienced counsel regarding the details of his examination. In the absence of such suggestions, however, the witness is sometimes unable to give his testimony in a convincing manner. The fact is that the competent witness in many cases gives his testimony with not more than twenty-five per cent of its possible ef-

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fectiveness because he is not properly examined. He cannot give the testimony because he is not asked the proper questions. In some cases the witness is not even asked the proper qualifying questions and many times the testimony is not presented at the right time, in the right order, or with the proper tone.

It is certainly to be regretted when a competent witness and qualified counsel on the right side of a good case cannot present testimony in the best possible manner. A witness who has testified last week, last month, and last year on exactly the same subject and under similar conditions, should know what he is able to do and, of course, should be permitted to present the testimony as he is prepared to give it. Carefully arranged co-operation between counsel and witness is necessary to success and this preparation should not be put off until the eleventh hour.

In one of these periods of depression and painful enlightenment following defeat, a frank attorney could put together the words of the following confession:

"In more than one case I now know that I have spoiled the testimony of my own expert witness and assisted in my own defeat."

Q. "How did it happen that you did this?"

A. "The cause was partly ignorance of the subject involved and partly what, I suppose, was a mixture of unwarranted self-confidence and stubbornness. I insisted on examining the witness in my own way, and when the testimony had been presented I thought that I had done my part quite well, but afterwards I was surprised to learn that I had unwittingly done to my own witness just what a cross-examination aims to do."

Q. "Did not the witness furnish you with detailed technical questions for his examination?"

A. "Yes, but I ignored them because I thought I knew how to ask the questions. I am obliged to admit that I did not even read the questions."

Q. "Do you think that you were to blame for the ineffective testimony?"

A. "Yes, almost wholly to blame in most cases. The difficulty was that I did not understand the details of the subject and therefore did not know how it could be best presented. I did not even know just what the testimony was to be and, as a result, plunged into what should have been the middle of the examination and asked the questions in the wrong order; asked some that should not have been asked, and omitted to ask others that should have been asked. I have since learned that I limited, restricted, and handicapped my own witness."

Q. "Didn't you discuss the proposed testimony with the witness before he testified?"

A. "Yes, but very briefly. The witness asked for a conference of this kind, and rather insisted upon it, but I thought that it was unnecessary as he was not a lawyer."

Q. "Have you since learned that your method was wrong?"

A. "Yes. I have learned that I made it impossible for the witness to give fully and convincingly the testimony that he was fully prepared to give. I now realize that not only the subject matter but the order and tone of the testimony was not what it should have been and that the witness went his way knowing that he had only half testified because I did not give him the opportunity to testify."

Q. "How did you learn that you had bungled the matter?"

A. "I heard the same witness properly examined in another case where it was first clearly shown that the witness was fully qualified to give an opinion as an expert as the law requires. But, in addition, the wide experience of the witness and his special preparation were shown in response to definite questions, and it was made clear in advance to court and jury that the opinion of the witness deserved careful consideration. After the qualifying—and in direct co-operation with the attorney—the testimony was presented in an interesting, logical and convincing manner, leading in natural steps up to a forceful conclusion and finally to a favorable verdict. All the necessary questions were asked, but much of the testimony was given continuously in response to a general question and without interruption by the attorney."

Q. "Are you the only one who has weakened testimony of technical witnesses in this way?"

A. "Oh, no. I now know that it is being done in many courthouses and especially by capable and experienced attorneys; it is a common performance. The excuse for it is that the trial attorney usually has to manage the ordinary witness in order to get testimony properly before the court, and the mistake is to assume that the qualified, technical witness is as unprepared as the ordinary witness. The incompetent and inexperienced witness must, of course, be managed.

"I was surprised to learn that a qualified technical witness, especially in certain disputed document cases, as well as in other technical cases, is now permitted in most courts, not only to give the reasons for his opinion, but the definite, detailed course of reasoning which leads up to the opinion. My examination did not permit the witness to give this vital part of the testimony. Many lawyers do not seem to know that testimony of this kind can be given.

"This analysis of the facts is what lawyers must usually give in argument, but in many cases they are not qualified to do this effectively. The best expert testimony is, in effect, a technical argument brought out by questions. This phase of testimony is, of course, usually objected to but giving the reasons for a conclusion amounts to an argument and it is now usually allowed if it is led up to and asked for in the proper way."[1]

It is true that there are here and there judges who do not fully understand that it is permissible for the expert witness to give detailed reasons for an opinion. These judges sometimes assist the trial attorney in spoiling what otherwise would have been good testimony. Together they can do this effectively. It should be added, however, that these restrictions by the court usually are due to the fact that the preliminary questions, showing the importance and necessity for the reasons for the opinion of the witness, are not skillfully and

1. *Reasons, Arguments or Opinions*—"It may be broadly stated as a general proposition that there are two classes of cases in which expert testimony is admissible. . . If the knowledge of the experts consists in descriptive facts which can be intelligently communicated to others not familiar with the subject, the case belongs to the first class. If the subject is one as to which expert skill or knowledge can be communicated to others, not versed in the particular science or art, only in the form of reasons, arguments or opinions, then it belongs to the second class." Dougherty v. Milliken, 163 N. Y. 527, 57 N. E. 757.

properly framed and are not in proper sequence and clearly expressed. The fault in most cases is the fault of the attorney. Nor is he prepared to make the proper arguments in response to objections to testimony of this kind. There unfortunately is here and there a judge who murders testimony; if it is interesting and convincing he considers it improper.

The qualified attorney knows that proof is the result of the marshalling of the necessary facts in the right order and manner. He also knows that the right tone is an important element in all proof and that, in order to be convincing, facts must be presented with the necessary clearness and emphasis. This emphasis is partly the result of a proper atmosphere surrounding this process of proof. This last delicate influence, apparently unknown to many lawyers, can only be produced by the combined, skillful effort of counsel and witness; it is impossible for the witness to produce the effect alone.

Certain of these vital phases of proof, here referred to, are proper and admissible in testimony if given in response to properly worded questions, but a witness is not usually permitted to put reasoning into testimony of this kind unless a specific series of questions call for it.

Under even the best conditions, proof in many of these special cases is difficult, especially with a jury, and of course no helpful element should be omitted. It is pitiful when the interests of justice are endangered by failure to ask proper questions. The witness should not be blamed for defeat if he is qualified but not properly interrogated.

THE COMMERCE CLAUSE OF THE CONSTITUTION

Decisions of the United States Supreme Court from the Date of the Opinion in Gibbons vs. Ogden Down to the Present Time Show Its Absolute Consistency in Drawing the Line Definitely between Intrastate Commerce and Interstate Commerce—Theory on Which Some Would Extend the Power of Congress over Wholly Intrastate Matters—Legislation Recently Enacted Under Supposed Warrant of Commerce Clause—Constitution as a Foundation*

By Hon. Edgar S. Vaught
U. S. District Judge for Western District of Oklahoma

THE selection of my subject has been made with the firm conviction that the Bench and Bar of the State and the Nation today are intensely interested in this particular subject because of its effect upon recent legislation by Congress, and a frank discussion of this question will undoubtedly be of interest to the members of the Bar who have not had occasion to give the subject special consideration. Ordinarily, a discussion of a legal proposition by a judge, who might at any time be called upon to decide a case involving the same question, might verge on impropriety, but since I have already expressed myself in decisions from the Bench, I do not feel that consistency or judicial propriety would be violated by a discussion of its legal significance.

Every member of this Association has taken an oath to support the Constitution of the United States, and, therefore, I know of no class or profession which is under greater obligation to give our fundamental law careful and conscientious study.

The limited time at my disposal will not permit a consideration of that document as a whole, but my remarks will be devoted to a single clause. It is merely one of the many enumerated powers delegated to Congress.

"The Congress shall have power to regulate commerce with foreign nations and among the several States, and with Indian tribes."

The incorporation of this clause into the Constitution was not accidental, for in some respects it was a particularly significant part of that great document. The calling of the Constitutional Convention was not a spontaneous action. The people were in no mood to consider and approve any plan for a central government. The loyalty of the citizens to the individual State was much greater than any loyalty to a supposed or conditional national government. A rather justifiable plan of deception was practiced by those directly interested in the formation of a national government. The idea of a central government was obnoxious to the States, and they were reluctant to surrender any of their inherent powers.

Washington, the towering genius of his Age, suggested the strategy by which the States were induced to consider a step toward union. Commerce has always been the most powerful factor in our civilization. It was an important factor with the Colonies. Costly jealousies among the States, because of individual state commerce, exposed the tender chord which the strategy of Washington touched. The population of the new country was gradually moving westward, and the rich, productive valleys of the Mississippi, the Ohio, and their tributaries, with the possibilities for trade with the Indians, were held before the people of

*Address delivered at the 1935 Annual Meeting of the State Bar of Oklahoma, held at Oklahoma City.

Virginia, Maryland and Pennsylvania in a most appealing way. It was even suggested that great canals could be constructed to unite the Ohio and the Atlantic, and thus establish a means of transportation to carry commerce to the interior and profit by the Indian trade.

When the convention was called at Annapolis, it was a commercial convention. Only a short time before, a plan had been proposed at Mount Vernon for a commercial agreement between Virginia and Maryland for the navigation of the Potomac. An invitation was extended to Pennsylvania to join in that agreement, and later Delaware was invited to participate. A further conference between the States participating in the plan for the navigation of the Potomac, was followed by a call to all the States for the Annapolis convention in September, 1786. This convention, while ostensibly called for the purpose of considering the commercial interest of the various States and their particular interest in extending their commerce beyond State limits, was understood by Washington, Madison, Franklin, Hamilton, and other proponents of a national union, as the first step in formulating a constitutional government.

The Continental Congress had resented the call for the Annapolis convention as interfering and meddling with the matters strictly belonging to the Continental Congress. However, as a result of the influence of the Annapolis convention, the Continental Congress was induced to call a convention to meet in Philadelphia, and the call for that convention by the Continental Congress specifically limited the powers of the convention, and stated that it was called "for the sole and express purpose of revising the Articles of Confederation." But as is well known, this convention, after it was called, abandoned entirely the idea of revising the Articles of Confederation and wrote the Constitution of the United States. Early in the year 1786 it was proposed in the Continental Congress that that Congress pass a resolution giving to itself power to regulate commerce. But this suggestion created such opposition among the States that the resolution was abandoned. It is unnecessary here to relate the interesting proceedings of that great convention. Its membership consisted of the flower of American intelligence and statesmanship; and the leaders of the movement, seeking to harmonize commerce among the States, and give the new Nation the advantage of commercial development, as they had been the leaders in the Annapolis convention, became the leaders in the Constitutional Convention. It is not strange, then, that these same leaders, imbued with the idea of the commercial development of the Nation, did not overlook the necessity for the incorporation into the Constitution of a simple clause which satisfied the States, and at the same time, gave the central government the specific power to enforce harmony among the States in the conduct of their commercial relations.

Prior to the adoption of the Constitution there were at times grave and conflicting contests between States as to the rights of a State to control its commerce and to interfere with the commerce of another State. When the Constitution, therefore, provided that "Congress shall have power to regulate commerce among the several States," the word "regulate" had a definite meaning. It was never for a moment contended by the strongest Federalist that Congress would have power over commerce wholly within a State, but rather that the regulation contemplated by the writers of the Constitution would protect each State in control of its own commerce. When, however, commerce moved from one State to another, there was present a commercial relationship which could not be controlled wholly by either State, and a situation arose which called for the exercise of power by the National Government to prevent either State from interfering with the free flow of commerce from State to State.

This particular clause of the Constitution, later known as the "Commerce Clause," was regarded as a protection to the commerce of the individual State and was treated with such jealous respect by each State that for more than thirty years following the adoption of the Constitution, no question involving the Commerce Clause reached the Supreme Court for adjudication. The tendency of the States during this period was to encroach upon the powers of Congress; and at no time was it seriously charged that Congress sought by legislation to interfere with the rights of the individual State, with the exception that some of the States hesitated to conform strictly to the provisions of the Constitution with regard to national revenue. These matters, however, were settled definitely and to the satisfaction of the States and the Nation. The young Republic was not content to remain long within its original geographical limitations. Florida was soon added to the south; the Louisiana Purchase almost doubled our territory; our controversy with Mexico extended our borders to the Pacific; and, this all occurred within sixty years after the adoption of the Constitution. Our population increased in a greater ratio than did our territory. Our development, however, was not confined to population and territory. Inventive genius began to assert itself and left in its wake the steamboat, steam engine, cotton gin, telegraph, sewing machine, improved farm machinery, and many other mechanical devices of practical use. The production of cotton, wheat, live stock, and other farm products began to assume proportions not contemplated in the early years of our national history. Transportation by steamboat and steam railway was the apparent product of necessity. Our frontiers were no longer frontiers, and the growth of our Nation in population, in area, and in commerce, challenged the attention of the world. From a present day observation, we can logically conclude that in a century and a half after the adoption of the Constitution, our Nation has become the wealthiest and most powerful Nation in the world. I have incidentally mentioned our wonderful development only as it becomes relevant to the Commerce Clause. Our commercial development as a Nation could not have occurred but for the harmonizing effect of the Commerce Clause upon the commercial relations among the States.

Early in the nineteenth century Robert Fulton invented the steamboat. His success in giving his invention a practical value was due largely to the assistance, both financial and personal, of Robert Livingston of New York. The Legislature of New York, to show its appreciation of this wonderful invention and the possibilities of navigation thereunder, passed an act giving to Fulton and Livingston a monopoly in the navigation of the Hudson

River and other waters within the State. The same company procured exclusive franchises from other States. Soon thereafter, retaliatory statutes were passed in New Jersey, Connecticut and Ohio. These retaliatory statutes were aimed particularly at the navigation of navigable streams within their borders by any vessel "operated by fire or steam." The test came when Thomas Gibbons of Georgia, a former partner of one Ogden, started an opposition line in 1818 between New York and Elizabethtown, New Jersey. His former partner, Ogden, was operating a line between the same points under a franchise or license granted by Fulton and Livingston. It was Gibbons' contention that navigation of the Hudson River from the New Jersey port to New York was interstate commerce, and it was not subject to control by the State of New York. Chancellor Kent issued an injunction enjoining the use of the Hudson River by Gibbons with a steam propelled vessel. The decision of Chancellor Kent was sustained by the Court of Errors of New York. The case was appealed to and finally docketed in the United States Supreme Court in January, 1822, Daniel Webster appearing for Gibbons and William Pinkney appearing for Ogden. Argument was not reached until 1824, by which time Pinkney had died, and Gibbons was represented by Webster, William Wirt and David B. Ogden, while Ogden was represented by Thomas Addis Emmet and Thomas J. Oakley.

There was squarely presented, therefore, for determination by the Supreme Court the meaning, significance and force of the Commerce Clause. This case attracted national attention. Many days were taken in its argument alone, and members of the House and the Senate left their respective chambers to hear the first great discussion of this important clause of the Constitution before our highest court. It was an important case for the whole Nation. The court delivered its opinion on March 2, 1824, three weeks after its argument. The opinion was delivered by Mr. Chief Justice Marshall and the court held that the abstract right to engage in commerce, if it existed, was the product of State law and not the Federal Constitution, and the opinion, in speaking of the right to engage in commerce, said (9 Wheaton 1):

"That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. This is true. The constitution found it an existing right, and gave to congress the power to regulate it."

The opinion further defined commerce as "traffic and intercourse" and stated that the language of the clause comprehends every species of commercial intercourse between the United States and foreign nations, and among the several States, and that the clause did not comprehend that commerce which is completely internal and carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States.

Up to this time no opinion of the Supreme Court was so far reaching, nor was the subject of such universal interest. It made possible commercial relations among the various States without the friction which had theretofore existed, and an era of good feeling between the States and the Federal Government was indicated on every hand. It must not be overlooked, however, that at this time the States were still jealous of their powers and rights. The public press was filled with discussions as to the effect this decision would have upon the rights of the States. The people were not slow to understand the advantage of the decision to the States, but they were still suspicious of any movement by the Federal Government to take from the States any of their inherent powers.

Thomas Jefferson, on December 26, 1825, the year before he died and a little more than a year after the decision in *Gibbons* v. *Ogden*, in a letter to his old friend Giles, said:

"I see, as you do, and with the deepest affliction, the rapid strides with which the Federal branch of our Government is advancing towards the usurpation of all the rights reserved to the States, and the consolidation in itself of all powers, foreign and domestic; and that too by construction which, if legitimate, leave no limits to their power. Take together the decisions of the Federal Court, the doctrines of the President and the misconstructions of the Constitutional Compact acted on by the Legislature of the Federal branch, and it is but too evident that the three ruling branches of that department are in combination to strip their colleagues, the State authorities, of the powers reserved by them, and to exercise themselves all functions foreign and domestic. Under the power to regulate commerce, they assume indefinitely that also over agriculture and manufactures, and call it regulation to take the earnings of one of these branches of industry—and that, too, the most depressed—and put them into the pockets of the other—the most flourishing of all. Under the authority to establish post-roads, they claim that of cutting down mountains for the construction of roads, of digging canals, and, aided by a little sophistry on the words 'general welfare,' a right to do, not only the acts to effect that which are sufficiently enumerated and permitted, but whatsoever they shall think or pretend will be for the general welfare."

I quote Mr. Jefferson to show the intensity of the feeling on behalf of the States and the jealous determination with which the advocates of States' rights rushed to the defense of the rights of the States at all times.

A number of cases came before the Supreme Court within the next few years, but in none of them did the Court depart from the rule declared in *Gibbons* v. *Ogden*; and it was recognized by the Court that the right to engage in commerce wholly within a State was a right subject to the jurisdiction of the State alone, and that the Commerce Clause of the Constitution did not interfere with commerce until it became commerce among the States, or interstate commerce.

In *Coe* v. *Errol*, 116 U. S. 517, the Court took occasion in a very practical manner to distinguish between intrastate and interstate commerce. Logs were cut in New Hampshire for final shipment to Maine. According to custom, they remained in or near a river for a year or more, apparently for the purpose of seasoning. They were taxed while in that condition by the State of New Hampshire, and it was held that the tax was valid, as the property was not actually in interstate commerce. The test laid down was "when did they commence their final movement for transportation from the State of their origin to that of their destination," and the Court said:

"There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common

carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason by their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State."

The Court announced the same rule again in *Kidd* v. *Pearson*, 128 U. S. 1:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile* v. *Kimball*, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests —interests which in their nature are and must be, local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

* *

"The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question."

In *Hammer* v. *Dagenhart*, 247 U. S. 251, the Court again adhered to the same rule, and said:

"Commerce 'consists of intercourse and traffic . . . and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439.

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

"'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state.' (Mr. Justice Jackson in *In re. Green*, 52 Fed. Rep. 113). This principle has been recognized often in this court. *Coe* v. *Errol*, 116 U. S. 517; *Bacon v. Illinois*, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd* v. *Pearson*, 128 U. S. 1, 21.

"It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation, and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

"There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may coöperate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which have no such regulations; surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress."

But it would be wearisome to cite more of the decisions of the Supreme Court showing its absolute consistency, from the date of the opinion in *Gibbons* v. *Ogden* down to the present time, in drawing the line definitely between intrastate commerce and interstate commerce.

It is contended by some, however, who would extend the power of Congress over matters wholly intrastate on the theory that the intrastate transactions affect or burden interstate commerce, that there has been a gradual tendency on the part of our highest court to depart from the rule, which was so definitely announced in *Gibbons* v. *Ogden, Coe* v. *Errol*, and numerous other later cases, and to give the Commerce Clause a much broader construction. But in an opinion by our highest court, *Chassaniol* v. *City of Greenwood*, 291 U. S. 584, decided March 12, 1934, Mr. Justice Brandeis, speaking for the Court, said:

"Chassaniol contends that all the cotton is in interstate or foreign commerce from the moment it leaves the gin for Greenwood, or at least from the moment it is purchased at Greenwood by the buyer. The argument is that already at that time the cotton is destined for ultimate shipment to some other state or country; and that to tax the occupation of the cotton buyer burdens interstate commerce, since the buyer at Greenwood is the instrumentality by which the interstate transaction is initiated. The business involved is substantially like that described in *Federal Compress Co.* v. *McLean;* and the rule there declared must govern here. Ginning cotton, transporting it to Greenwood, and warehousing, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale, and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

This is almost the last word of the Supreme Court on this question, and I repeat that there has been no departure from the position taken in *Gibbons* v. *Ogden* down through the various decisions of our highest court in the construction of the Commerce Clause. There are a number of cases where intrastate commerce has been involved in interstate commerce . In *Swift & Company* v. *United States*, 196 U. S. 375 the Court said:

"Although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon com-

merce among the States is not accidental, secondary, remote or merely probable. * * * Therefore the case is not like *United States* v. *E. C. Knight Co.*, 156 U. S. 1, where the subject matter of the combination was manufacture and the direct object monopoly of manufacture within a State. However likely monopoly of commerce among the States in the article manufactured was to follow from the agreement it was not a necessary consequence nor a primary end. Here the subject matter is sales and the very point of the combination is to restrain and monopolize commerce among the States in respect of such sales."

In *Stafford* v. *Wallace*, 258 U. S. 495, there were involved certain transactions in the Chicago stockyards, and while the transactions were wholly within the State of Illinois, yet they were of a character which affected interstate commerce, and Mr. Chief Justice Taft, in delivering the opinion, said:

"The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions can not be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales of the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity. The origin of the live stock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

The Chicago Board of Trade v. *Olsen*, and *Coronado Coal Co.* v. *United Mine Workers* are similar in their holdings to the cases last above cited, but in every case where the Supreme Court has held that an intrastate transaction affects or burdens interstate commerce, there is present either a conspiracy or an evident intent to interfere with interstate commerce.

Our National Government is based upon the existence of individual States, and the Constitution not only recognizes their rights, but after providing that certain powers should be delegated to the Congress, provides further that "the powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." If, therefore, there is an inherent power, it exists in the State and not in the National Government, because the National Government has no power other than that delegated to it by the Constitution. The Constitution did not delegate power to Congress in a general manner, but specifically enumerated every power that Congress should possess. We are inclined at this day and time to believe that we have made rapid strides, when compared to the accomplishments of our forefathers. In some respects, in commerce, education, manufacture, and invention, we have gone far, but when it comes to the study of government, our brightest statesmen admit the eminent statesmanship of Jefferson, Washington, Madison, Hamilton and many of their associates. We have many great judges today, but it would be difficult to find one today who would agree that he is capable of comparison with Marshall or many of his associates of the Bench.

The tendency to resist the exercise of any power not specifically granted to the National Government in the Constitution is not new. Washington, in his Farewell Address, speaks to us almost as a prophet when he says:

"Toward the preservation of your Government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what can not be directly overthrown."

* *

"It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

In the first inaugural address of Thomas Jefferson we find these significant words:

"About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; . . . These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety."

Benjamin Franklin, toward the close of the work of the Constitutional Convention, said:

"There is no form of government but what may be a blessing to the people if well administered, this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupt as to need despotic government."

Members of the Bar and judges of the Bench face today a most delicate situation. The tendency to propose something new in government is suggested by theory rather than seasoned judgment.

All governmental powers may be divided into two classes: those delegated by the people through the Constitution to the United States, which are spe-

cifically enumerated; and those reserved by the Constitution to the people and the States.

Congress within the past two years has enacted legislation delegating legislative powers to the executive branch of the Government, under and by virtue of which the executive branch of the Government has promulgated and approved more than eleven thousand Executive Orders, all of which are supposed to have the full force and effect of Federal statutes. Among these are Executive Orders, or codes, providing:

For the regulation of the production of oil;

For the regulation of the production, sale and price of milk by the farmer to milk distributors within the same community or county;

For the regulation of the price paid for cleaning and pressing a suit of clothes in any town or city;

For the regulation of the price at which new automobiles may be sold and the price which may be allowed for used cars in exchange;

For the regulation of the hours of employment, number of employees, and wages, in strictly local business concerns;

For the regulation of the acreage cultivated in cotton, corn, wheat and other farm products, on a single farm;

For the regulation of the number of live stock produced, grown and kept by any farmer, and for the purchase by the Government, and the killing of any excess hogs and cattle.

All the foregoing codes or Federal statutes have been enacted supposedly under the legislative power possessed by Congress under the Commerce Clause of the Constitution—regulation of commerce among the States.

It is difficult for conscientious courts to recognize this class of legislation as having any constitutional authorization in view of the very positive decisions of our highest court, in definitely defining the distinction between interstate and intrastate commerce. And yet, our Federal courts throughout the land are filled with these cases, and their immediate adjudication is being urged.

If conditions arise which call for the exercise by our National Government of powers not expressly delegated to the National Government, there is a remedy, and that remedy is by an amendment to the Constitution. Ample provision has been made in the Constitution for its amendment, and the will of the people at all times is all that is necessary to effectuate the desired change. But so long as the Constitution remains as it is written, and so long as it is construed as our highest court has construed it, it becomes the duty of judges and lawyers to follow the interpretation that has been thus placed upon it. We may be subject to criticism and censure, but our oath to support and defend the Constitution is paramount.

Some months ago a member of this association, and one of my intimate and respected friends, wrote a splendid paper on "The Flexibility of the Constitution." I was impressed with the ingenuity of his argument, but I am not entirely in accord with his conclusions. As to whether or not the Constitution is flexible, we ought to consider the character of the material of which it is constructed. If it be made of rubber or wood, or some other flexible substance, naturally it would possess some elements of flexibility. But our Constitution is a foundation. In fact, it is the greatest foundation ever constructed and it was constructed according to plans and specifications. I rather like the idea, when speaking of the materials used in foundations, to think of granite or some such lasting and permanent substance. It is not difficult to remove a stone in a foundation, but it would be dangerous to the superstructure if that foundation would materially yield to the force and pressure of storm or occasion.

Certainly members of the Bar and judges of our courts, who acknowledge their obligation "to support and defend the Constitution," cannot desert their posts of duty when the maintenance of that document is threatened, whether by friend or foe. For some years it has been "open season" on the laws of our land, and incidentally on the Constitution.

The cost of crime in the United States during the past year has amounted to approximately Fifteen Billion Dollars, a most startling figure. How to combat crime is challenging the highest intelligence of the Nation. May I most humbly suggest one remedy? Let those whose duty it is to enforce law, respect and obey law.

I do not want to be understood as criticizing the high purpose, the wise policies, nor the laudable intention of our law-making bodies; rather would I condemn carelessly constructed, loosely connected, and improperly considered legislation, without regard to its consistency with constitutional authorization.

When statutes, in the judgments of courts after careful and thoughtful consideration, are found to be unconstitutional, the course for the courts is plain—they must either respect their oaths and hold the statutes unconstitutional, or they must avoid the real issue by some circuitous judicial detour, and thus encourage what in fact amounts to undermining constitutional government.

The perpetuity of constitutional government in this Nation depends upon the attitude of Bench and Bar. With an army of recruits to the legal profession each year, we cannot be too careful in deeply impressing upon our youthful associates the fundamental importance of unequivocal fidelity to the Constitution.

Our Ship of State, with the Constitution as its compass, for a century and a half has weathered every form of sea and storm, and She has never yet failed to make port. Temporary conditions have at times forced Her out of Her course, but a proper reference to the compass, and a careful observation of its directions, enables Her to resume the true course.

I repeat, with added emphasis, as my concluding statement, that the permanence of constitutional government in our Nation depends largely upon that class of our citizenship which, by vocation, training, and practice, is best prepared to comprehend its advantages and to take the lead in demanding respect for its provisions—the Bench and the Bar.

Signed Articles

As one object of the AMERICAN BAR ASSOCIATION JOURNAL is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this JOURNAL assume no responsibility for the opinions in signed articles, except to the extent of expressing the view by the fact of publication, that the subject treated is one which merits attention.

WORK GOING FORWARD TOWARD COORDINATED BAR

Regional Conferences

REGIONAL meetings to report progress on the National Bar Program and to discuss a closer relationship between local, state and national bar associations are assuming considerable importance in carrying forward the work of coordination of the bar. On January 26th, Mr. Charles H. Strong, Secretary of the Association of the Bar of the City of New York, presided over a meeting called by him at the request of President Loftin at which lawyers from the three states in the Second Judicial Circuit were present, including American Bar Association representatives in those states and officials and committee chairmen of a number of the most important bar associations. The details concerning this meeting are given elsewhere in the Journal.

A similar meeting held in Boston on January 15th, called by Mr. Nutter, Vice President for the First Judicial Circuit, included members of the General Council, state bar association presidents and representatives of locals from Maine, New Hampshire, Rhode Island and Massachusetts.

Meetings of this kind are important in getting back to bar associations some idea of the work which is being done by other organizations on the subjects of the National Bar Program and in securing their participation in the discussion of practical plans for a better organization of the bar nationally. Mr. Strong, who served last year as the Vice President from the Second Judicial Circuit, is deserving of much credit for his pioneering part in organizing these gatherings. The meeting which he called a year ago at the time of the annual meeting of the New York State Bar Association was the first which had been held where representatives of all active bar associations in any circuit were invited to attend.

Plans are now under way for meetings to be held in the third and seventh circuits and there seems little doubt that this can be developed into an annual event in most of the circuits with beneficial results in promoting a closer contact between the associations in a particular region.

Work on the National Bar Program has now been going forward for a year and a half. There can be no question that it is proving effective. Last month in the Journal mention was made of the 18 states where some part of the criminal law recommendations of the American Bar Association, approved at Milwaukee, were being introduced in state legislatures. Present information shows that the number of states where such action is taking place has increased to 30. Definite plans for constitutional amendments or for legislation in reference to methods of judicial selection were then reported as being presented in 7 states. That number has now increased to 10.

The State Department of Justice idea was comparatively new when it was put before the voters of California last November and adopted by them. It was included in the American Bar Association recommendations and has now been introduced in the legislatures of seven other states. This is progress.

Behind these efforts lies the fundamental purpose of effective organization of the bar on a national scale to carry on permanently and efficiently the work in all fields concerned with the improvement of the administration of justice. Discussions in reference to such organization are taking place in a number of associations.

The efforts of the Coordination Committee for the past five years has been directed toward the formation of a plan which would accomplish the results desired and be acceptable to the bar. Mr. Philip J. Wickser, who has been secretary of the committee since its inception, spoke of this work at the New York conference which has been referred to, and his remarks are quoted to give a picture of the progress which has already been made. He said:

Wickser Discusses Coordination Progress

"Presumably we are all interested in the objectives of the coordination movement which are, broadly stated, to try to form some sort of vehicle which will make for an efficiency of effort and energy for all of the 1400 bar associations in the United States. It is necessary for us to confer from time to time in reference to the problems and difficulties which arise in the prosecution of that movement. Since this meeting is a gathering of representatives of associations from the second federal circuit, I would like to explain the work on coordination which has been done since last year's meeting. I would like you, in turn, to give me some expression of opinion, either formally or informally, for the benefit of the Committee on Coordination of the American Bar Association, in regard to the problems which confront it.

"This meeting is, in a way, a regional section of the American Bar Association. Such meetings are perfectly feasible if we can get them into operation. Through them we can exchange information on the specific topics now included in the National Bar Program.

"The coordination movement, as you will doubtless recall, is not quite five years old in its present form. There were coordination movements in the history of the American Bar Association from time to time, commencing at its very foundation in 1878. There was a notable movement that started in 1914 and lasted four or five years and accomplished a great deal. The present movement started in 1929 with Dean Rogers' address at the Conference of Bar Association Delegates.

"As a result of the Conference meeting in August 1930 in Chicago, the work of various committees on this subject was consolidated and put in charge of a 'Special Committee on Coordination' appointed by the Executive Committee. It has been at work five years, and has reported frequently. It first recommended certain changes in the internal organization of the American Bar Association and its recommendations were adopted at the Washington meeting in 1932. The tenure of the General Council was changed to three years and certain other reforms were discussed and some adopted. After 1932 the Committee continued its canvass and endeavor to determine the best method for coordinating the bar in this country. Three ways were considered. One was by a membership campaign—an attempt to

make the American Bar Association larger each year until it might include perhaps 60,000 or 70,000 lawyers instead of 27,000. The second method Mr. Root initiated in 1916. It called for immediate corporate connection between state associations and the American Bar Association. The Presidents of the state bar associations were made **ex-officio** members of the General Council. Unfortunately, the state associations were not ready to support that method. The Committee devised, in 1933, a plan more flexible than either of those and which yet did give us the beginnings of active coordinated work on a national basis. Last year when this meeting was held, the National Bar Program had just been adopted. Investigation had revealed that there were, perhaps, 30 or 35 important subjects on which the various state associations were working and taking a position publicly. But their efforts were staggered. The subjects were reduced to four and those were called the National Bar Program. The American Bar Association appropriated $12,000 to advance the work. Mr. Will Shafroth was engaged to take charge of it.

"The first objective of the National Bar Program was to see whether bar associations could coordinate in terms of work. Particularly to see whether a framework could be established upon which all active associations might combine their efforts.

"The second objective of the program was to demonstrate to the public that the bar is concerning itself with topics of great public importance such as criminal law and legal education. It was also desired to see whether the average lawyer would respond. Would he respond or would he continue to be concerned only with his own preoccupations? Did he want a national organization in which he could take pride? The program has been a complete success in respect to that. It is true that there have been certain shortcomings in pursuing these objectives. But on the whole we have made measurable progress toward all of them. As to whether the average lawyer will respond if given opportunity to join in work on a national scale, there is very little doubt.

How Work Has Been Carried On

"The Committee on Coordination, through Mr. Shafroth, started work on the National Bar Program with questionnaires. It was a first step. In December, 1933, a criminal law questionnaire was sent out which was very carefully prepared by the Section on Criminal Law of the American Bar Association. About 250 associations actively cooperated in work on the criminal law questionnaire. The other three topics were also sent out in the questionnaire form. Some 400 associations in all worked on them, reporting the opinions of lawyers in their districts about the topics involved.

"The National Bar Program was also made the basis for an annual meeting of a very different style than we had ever had before. The Executive Committee turned over three sessions of the annual meeting to the program. The sessions were very well attended; the debates were instructive. In criminal law the recommendations which were offered and adopted were based on the questionnaires and several months work on the part of the criminal law section, and of many strong sister associations. This represented something different, something more solid and widespread than the American Bar or any other association had ever before produced. In California a very considerable change in the technique of the administration of justice has been made, partly as a result of this work.

"Thus, the National Bar Program worked well during its first year. We realized, however, that its continued success and the ultimate success of coordination, which we hoped it would lead to, definitely depended upon adequate financial support. We are still in the depression and the American Bar Association's revenues were not increasing. It was going to be difficult for the Executive Committee to finance another year of widespread activity. But assistants on full time, and sufficient money for follow-up work, for correspondence and for printing were needed, if we were not to go backwards. The Coordination Committee went to the Executive Committee last May and pointed these things out to them. The Executive Committee gave it permission to accept money from anyone willing to give it. There was a tradition that the American Bar Association should not accept contributions, but this was a national plan which concerned the whole Association, and a good many members of the bar offered to assist. The Committee was also given permission to apply to the foundations and did apply to the Carnegie Corporation of N. Y., which made a grant of $50,000 in October, payable in three annual installments, on the understanding that the American Bar Association prosecute its coordination plan for at least three years. The Executive Committee adopted a formal resolution agreeing to do so and matched the grant received from the Carnegie Corporation. Therefore, commencing this fall, we had $100,000 for three years work. That enabled us to go forward with the program more vigorously than ever. In this connection, I want to say that the Carnegie Corporation made the grant to help to bring about a real coordination of the bar of America and in the hope that some machinery can be developed by which all the associations of the country can work together.

" In November, a budget was adopted. To assist Mr. Shafroth, a young lawyer was engaged to work specially on the Enforcement of Criminal Law, the first topic on the National Bar Program, and a second assistant was engaged for research and other purposes. Work is now well under way on a much more well devised basis than ever before. The Association of Law Schools, the American Law Institute, and to a certain extent the Conference of Commissioners on Uniform Laws have assisted the coordination movement and are interested in it. They are nationwide associations, and they have stated that the success of the coordination movement is vital to their own ultimate objectives.

"Much work, however, remains to be done. It is important to discover what, from the point of view of the strong associations, would be the best concrete plan for a coordinated national bar. We cannot presume entirely upon our own views or remain deaf to anything save our own ideas and interests. What, if any, changes in the structure of the American Bar Association should be made? How, in short, can we most effectively tie in other associations to the American Bar Association? Should there be a house of delegates? How about joint dues? The doctors have used that plan to

(*Continued on page* 182)

REPORT BY THE COMMITTEE ON COORDINATION OF THE BAR

To the Executive Committee at Jacksonville, Florida, January 31, 1935

1. The committee finds that the National Bar Program is becoming steadily more effective in stimulating interest and activity by the profession in the topics it includes and in bar organization generally. The Committee has emphasized follow-up work with all associations taking an active interest, and now is in contact with over 700 state and local association committees working on National Bar Program topics. It is serving them with information and assistance in a way they have never before been served and by specialized publications such as Unauthorized Practice News.

2. While the time for devising a definite plan for Coordination is rapidly approaching, your committee feels that the formulation of a definite plan still requires some study. Discussions and conferences with the leaders of active state and local associations which would necessarily be an integral part of a bar organized nationally under the leadership of the American Bar Association are taking place. Sincerely offered suggestions are being sought from all informed quarters. The Coordination movement has developed into a very large one affecting thousands of lawyers, many of whom are not yet members of the American Bar Association, but whose energies and support must be served ultimately. There are still difficult problems to be solved,—some as to machinery, some as to theory,—before a definite plan can be launched successfully. Every effort is being made to obtain accurately the point of view of strong associations and bar leaders as to such problems. The Committee feels that Coordination is now more than ever an American Bar Association project rather than the project of a single committee. To this end the advices of the Executive Committee as to the development of a final definite plan are urgently desired.

3. Your committee finds a sentiment developing in several states to follow the so-called "California Plan," whereby the State Association recommends to the members of the American Bar Association from that state in attendance at the Annual Meeting, the name of a member of the American Bar Association from that state for election to the General Council. Your committee feels that this is a move in the direction of broadening the representative quality of the General Council, and of stimulating deeper interest on the part of the state associations in the work of the American Bar Association and has accordingly encouraged it. Theoretically certain difficulties remain to be worked out before such a system could become general but it is felt that they can readily be solved.

4. The committee has not since September last devoted attention to the possible changes which may become necessary in the Constitution and By-laws of the Association as coordination with other associations hereafter becomes a reality. The committee would like to point out, however, that the reduction in 1932 of the 48 Vice Presidents to 10 was a constructive step forward. In two federal circuits mid-winter meetings of General Council members and state and local association officials have been called by energetic Vice Presidents and as a result work on the National Bar Program has been increased and associations have been brought more closely together. The committee suggests that the duties assigned to Vice Presidents be increased because it is sure they will respond. Such work might be largely organization work and membership work and could be tied in to the Chicago headquarters and based on a general plan, directed by the President upon your authorization.

5. Your committee believes it important at all times to acquaint the public and the bar (a) with the nature of the work being done by the Association and its committees generally, and (b) with the National Bar Program and Coordination Plan. It is cooperating with the Committee on Publicity and endeavoring to enlarge this effort rapidly.

Respectfully submitted,

James G. Rogers,
Harry S. Knight,
John C. Townes,
Philip J. Wickser,
Jefferson P. Chandler, Chairman.

SPECIAL TRAIN FOR LOS ANGELES MEETING AND RETURN

THE Committee on Arrangements for the Los Angeles Meeting has completed plans for a special train to Los Angeles and return which will make it possible for members of the Association living in the East, South and Middle West to join their friends on the trip to the West Coast and return, and enjoy with them some of the scenic beauty and points of interest which cannot be viewed on the regular schedule. The tour will include Colorado Springs (Pike's Peak, Cheyenne Mountain, the Garden of the Gods and other surrounding beauty spots); the Royal Gorge, Salt Lake City, and Boulder Dam on the West-bound journey, and then after approximately ten days in Los Angeles, Yosemite National Park, San Francisco, Redwood Forest, Grant's Pass, the Columbia River country, and then East through Spokane, Washington, Butte, Montana and Yellowstone National Park.

In the event that the number of persons wishing to leave the tour train at Spokane and visit Glacier Park instead of Yellowstone Park is sufficient to warrant special arrangements for an organized party, they will be made and announced later. Individual members wishing to return via Glacier Park may do so and detailed information will be furnished on request.

Time Required to Make the Trip

The schedule above outlined contemplates departure from Chicago at 11:30 A. M. on Wednesday morning, July 10th, on the Chicago, Burlington and Quincy Railroad; arrival at Colorado Springs at 2:00 P. M. July 11th; departure on the Denver and Rio Grande Railroad at 3:30 P. M., July 12th; arrival at Salt Lake City at 1:30 A. M., July 13th; departure at 5:00 P. M., July 13th on the Union Pacific Railroad; stopover at Boulder Dam for three to four hours on Sunday morning, July 14th, and arrival in Los Angeles the same evening at 8:30 o'clock.

The sessions of the Association and its Sections will occupy the entire time from Monday morning, July 15th to Friday, July 19th, and during that time and on Saturday, July 20th, members of the party, with other members of the Association, will enjoy the hospitality of the Los Angeles Bar Association and the State Bar of California.

Departure from Los Angeles will be on Monday evening, July 22nd, thus giving the members of the party two or three days after the close of the meeting to visit points of interest in southern California, arrangements for which may be made after arrival in Los Angeles.

The return trip will occupy approximately 10 days, most of which time will be spent in the National Parks and sight-seeing—the party arriving in Chicago August 1st.

Entertainment

Motor trips, hikes, horse-back rides, luncheons, dinners and musical entertainment will be arranged for. The program, however, will be so planned as to leave a sufficient margin of time for rest and such recreation as each member of the party may prefer.

Reservations

Requests for reservations or for more detailed information should be addressed to the American Bar Association, 1140 North Dearborn Street, Chicago.

Expenses of the Trip

The Committee has endeavored to make such plans as would call for the least possible expense to the individual traveler, and to this end has included in the expense of the trip every item considered necessary. The rates which will be quoted include round-trip railroad fare from Chicago to Los Angeles and return, Pullman fare, all meals on trains and during stop-overs, automobile trips, Park tours, and incidental sight-seeing. They do not include hotel or other expenses in Los Angeles or gratuities throughout the trip. Tickets from points other than Chicago can be purchased and routed so as to give the purchaser the benefit of the round-trip railroad fare from the point of departure to Los Angeles.

Final Plans for the Trip

Complete announcement with detailed itinerary, rates, and other information, is in course of preparation and will be mailed early in March to all members who responded to the announcement in the January JOURNAL, and to other members who may subsequently respond.

Hawaiian Invitation Accepted

The Executive Committee has accepted the invitation extended to members of the Association attending the Los Angeles meeting to visit the Hawaiian Islands, the invitation having been received from the Governor of Hawaii, Hon. Joseph B. Poindexter, on behalf of the people of the Territory, and from Hon. R. A. Vitousek, Acting President of the Bar Association of Hawaii.

The Committee on Arrangements has selected for the outgoing trip the Matson Line steamer "Malola", sailing from Los Angeles on Saturday July 20th, and for the return voyage, the Matson Line steamer "Lurline", sailing from Honolulu on Saturday, August 3rd.

A number of members of the Association have already expressed their intention of joining the party, and others who may wish to do so should promptly communicate with the Executive Secretary, 1140 North Dearborn Street, Chicago, who will thereupon furnish to the inquirer complete information with reference to rates, space, and hotel reservations in Honolulu.

Arrangements for Annual Meeting at Los Angeles July 16 to 19, inc., 1935

HEADQUARTERS: BILTMORE HOTEL

Hotel accommodations, all with bath, are available as follows:

	Single for one person	Double (Dble. bed for two persons)	Twin beds for two persons	Parlor Suites
Biltmore	$3.50 to $6.00	$6.00 & $7.00	$7 to $ 9	
Ambassador	5.00 to 7.00		7 to 11	$18 to 22
Clark	2.50 to 3.00	3.50 to 4.00		7 to 15
Hayward	2.00 to 5.00	3.00 to 7.00		
Mayfair	2.50	3.50	4.00 to 5.00	
Mayflower	2.50 to 3.50	2.50 to 3.50		
Rosslyn	2.50	3.50	4 & 5	10
Savoy	2.50 to 3.50	2.50 to 3.50		

Explanation of Type of Rooms

A single room contains either a single or double bed to be occupied by *one* person. A double room contains a double bed to be occupied by *two* persons.

A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number of rooms required and rate therefor, names of persons who will occupy the same, and arrival date, including definite information as to whether such arrival will be in the morning or evening.

Reservations should be made as early as possible. Requests should be addressed to the Executive Secretary, 1140 North Dearborn Street, Chicago, Illinois.

National Conference of Commissioners on Uniform State Laws

The next Annual Meeting of the Conference will be held at the Biltmore Hotel, Los Angeles, California, beginning Tuesday, July 9, 1935.

Applications for hotel reservations should be made to the Executive Secretary of the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois.

Former President Honored

A portrait of Charles A. Boston, former president of the American Bar Association, was unveiled in the home of the New York County Lawyers' Association during its January meeting. From 1932 to 1934, Mr. Boston served as president of the County Lawyers' Association. He has been active in the work of the association, serving on a majority of its important committees. After the unveiling ceremonies, Presiding Justice Francis Martin of the Appellate Division, First Department, discussed criminal administration and the work of the courts.

California Pacific International Exposition at San Diego Will Be Added Attraction

MEMBERS of the legal profession who visit the California Pacific International Exposition opening at Balboa Park, San Diego, on May 29th will be interested in the model of the sailing ship, Mary Ann, which forms a part of the collection in the Palace of Science.

Made in 1885 by an old sailor, this model of the Mary Ann was used in the courts of San Francisco in cases before the admiralty courts. Using the model, counsel and witnesses were able to point out to judge and jury the respective positions of vessels involved in litigation over collisions. It was also used in accident suits brought by individuals against ship owners, the exact miniature being used to instruct the court as to rigging and spars involved in the testimony.

Aside from the legal interest this tiny bark rigged ship holds for the visitor to America's Exposition—1935, students of marine modeling will find it a faithful reproduction of an old time windjammer.

The California Pacific International Exposition will achieve a truly international aspect through the participation of many foreign nations. Headquarters for these countries will be located in the House of Pacific Relations, a group of hacienda type buildings, built about a central patio where the fetes and celebrations of the various nations will be staged.

In the Palace of Fine Arts a comprehensive collection of paintings, sculpture and other forms of artistic expression has been gathered. Rubens

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Majestic Tower, Palace of Sciences, Western Entrance

AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR
MANAGING EDITOR
Journal Office: 1140 N. Dearborn Street
Chicago, Illinois

THE GOLD CLAUSE CASES DECIDED

The eagerly awaited decisions of the Supreme Court have been handed down. The period of suspense has been ended with definite pronouncements which settle the important points involved. The power of Congress, in the exercise of its constitutional authority in relation to the currency, to abrogate the "gold clause" in private contracts is upheld. This ruling also applies to such clauses in the "contracts or obligations of States or municipalities, or their political subdivisions, that is, to such engagements as are within the reach of the applicable national power." But the power is expressly rejected in the case of the Government's own obligations which carry the gold clause. Recovery was indeed denied, but on the ground that no damage had been shown and that the Court of Claims was without jurisdiction of a claim for nominal damages.

The Court of course realized, as did the entire nation, the importance of the questions presented. It met them all boldly in an effort to clarify the situation. As Mr. Justice Stone pointed out, the Court could have technically rested its decision in the Perry case on the simple point of no proof of damage and therefore no jurisdiction in the Court of Claims; indeed, he expressed the opinion that it would have been advisable to do so, and not attempt to settle the question of the validity of the Government's obligation.

But the Court plainly felt that the situation called for the most complete clarification of all aspects of the problems presented. It therefore left no vital point unsettled, to be used as a basis for future litigation. In the Perry case, involving the validity of the Government's Liberty Bond obligations, there is indeed the possibility of further suit, but not on the vital issue of the validity of the Government's obligation to pay as agreed. That is settled. Any further proceeding must rest solely on the ability of the petitioner to set forth facts showing actual and substantial damage, thus complying with the jurisdictional requirements for an action in the Court of Claims. And as Mr. Justice Stone pointed out in his separate opinion, a Congressional Act can easily deprive that Court of jurisdiction in such cases.

Probably no one was more alive to the possible consequences of the decision, one way or the other, than the members of the Supreme Court. If, as has been said, "there is a logic relative to consequences—" in other words, one in which the possible actual consequences play as important a part as any legal premises, here was certainly a situation in which its application would seem natural. The court, however, did not yield to the pressure which comes from consequences. It was another sort of logic—the familiar technique of constitutional interpretation—which dominated its decision. "We are not concerned with consequences," declared Chief Justice Hughes in the majority opinion, "in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of Congress over the monetary system of the country and its attempted frustration."

The constitutional power of Congress over the currency is first considered, and the conclusion reached that it has the power to establish a uniform currency, and parity between different kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. No private contract can stand which interferes with the policy of Congress in the exercise of that authority; it must yield, as other private rights have time and again had to yield, to the exercise of plain constitutional authority. Moreover, the contract in the cases before the Court, is held to be one for the payment of money, and not for the payment of gold as a commodity or in bullion — thus bringing it within the ambit of currency legislation.

The argument thus is brought down to the question of whether, in fact, the gold clause in the private contract does interfere with that authority. On this point the Court holds, "the Congress is entitled to its own judgment. We may inquire whether the action is arbitrary or capricious, that is, whether it has a reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision of Congress as to the degree of the necessity for the adoption of that means, is final." The Court thereupon sets out a statement of the report of the House Committee on Banking and Currency and the words of the Joint Resolution of June 5, 1933, as representing Congressional determination of the question of fact, and inquires: "Can we say that this determination is so destitute of basis that the interdiction of the gold clauses must be deemed to be without any reasonable relation to the monetary policy adopted by Congress?" Answering its own question, it proceeds to consider certain matters of "common knowledge" and reaches the definite conclusion that "it is certainly not established that the Congress arbitrarily or capriciously decided that such interference existed."

But the gold clause in the Government bond, as above stated, is brought under a different rule in the Perry case. Here four of the majority members and the four minority members march together in holding that the Congress was without power to abrogate the gold clause in its own bonds. But from that point they divide. The majority holds that no damage was shown and that the Court of Claims is without jurisdiction over a suit for nominal damages. The minority, speaking through Mr. Justice McReynolds, rejects the reasoning by which the majority reaches the conclusion that no damages were suffered, and, in addition, points to actual losses suffered in two instances as a result of the appreciation of foreign currencies in their relation to the American dollar.

In applying a different rule to the case of the gold clause in the Government bond, the Court declared that "there is a clear distinction between the power of Congress to control or interdict the contracts of private parties where they interfere with the exercise of its constitutional authority, and the power of Congress to alter or repudiate the substance of its own engagements where it has borrowed money under the authority which the Constitution confers. . . . By virtue of the power to borrow money 'on the credit of the United States,' the Congress is authorized to pledge that credit as an assurance of payment as stipulated, as the highest assurance the Government can give, its plighted faith. To say that the Congress may withdraw or ignore that pledge is to assume that the Constitution contemplated a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This Court has given no sanction to such a conception of the obligations of our government."

The dissenting opinion of Mr. Justice McReynolds applies to all the decisions handed down by the majority. He finds the fundamental question to be whether the "recent statutes passed by Congress in respect of money and credits were designed to attain a legitimate end. Or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily to destroy private obligations, repudiate national debts and drive into the Treasury all gold within the country in exchange for inconvertible promises to pay." He concludes that it has, and from this premise his conclusions naturally follow.

The resolution of June 5, he declares, was aimed directly at the destruction of gold contracts, thereby bringing about a reduction of debts, and had no relation to the power to issue bills or to coin and regulate the value of money. Its end was thus not "legitimate" and it was not appropriate for carrying into effect any power entrusted to Congress. "The gold clauses," he continued, "in no substantial way interfered with the power of coining money or regulating its value or providing a uniform currency."

Justice McReynolds' criticism of the majority opinion in the case involving a Government bond is that it "amounts to a declaration that the Government may give with one hand and take away with the other." He adds: "Congress brought about the conditions in respect to gold which existed when the obligation matured. Having made payment in this metal impossible, the Government cannot defend by saying that if the obligation had been met the creditor could not have retained the gold, consequently he suffered no damage because of the non-delivery. . . . The Government may not escape the obligation of making good the loss incident to repudiation by prohibiting the holding of gold."

REVIEW OF RECENT SUPREME COURT DECISIONS

Congressional Joint Resolution of June 5, 1933, Declaring Gold Clause in Any Obligation for Payment of Money to Be against Public Policy and Providing That It Shall Be Discharged upon Payment, Dollar for Dollar, in Legal Tender, Held Constitutional as to Private Contracts—Holder of Gold Certificate not Entitled to Receive More Currency Than That Called for by Face Value of Such Certificate—Congress Held without Power to Override Gold Clause in Government Bonds—Since Bondholder Had Shown no Actual Damages by Devaluation of the Dollar, the Court of Claims Was Held not to Have Jurisdiction of Suit—Power of Senate to Punish for Contempt

By Edgar Bronson Tolman*

Constitutional Law—Power of Congress to Fix the Value of Money—Validity of Joint Resolution of June 5, 1933

Under its constitutional power to coin money and to regulate the value thereof, and certain related powers, Congress has authority to declare that provisions of private contracts requiring payment in gold or its equivalent are contrary to public policy and are unenforceable, where their enforcement would interfere with the monetary policy of Congress.

In this view, it was within the power of Congress to enact, by joint resolution of June 5, 1933, that gold value clauses in private obligations were against public policy, and to declare that such obligations should be discharged upon payment, dollar for dollar, in legal tender.

Norman v. Baltimore and Ohio R. R. Co., No. 270, *United States et al v. Bankers Trust Co., et al.,* Nos. 471, 472.—55 Sup. Ct. Rep., 407; 79 Ad. Op. 417.

The holder of gold certificates was not entitled to receive from the United States more currency than the face value of his certificates, upon surrender thereof to the Secretary of the Treasury, as required by law, although at the time of such surrender the weight of a dollar was 25.8 grains, nine-tenths fine, and the market value thereof was in excess of the currency received by the holder.

Nortz v. United States, No. 531.—55 Sup. Ct. Rep., 428; 79 Ad. Op. 442.

It was beyond the power of Congress to override the gold clauses in Government bonds; but since no actual damages are shown by the bondholder by reason of the devaluation of the dollar and payment of the bond in legal tender, the bondholder may not maintain a suit against the Government on his bond to recover an amount in excess of the face value of his bond in legal tender, for the reason that the Court of Claims has no jurisdiction over a suit for nominal damages.

Perry vs. United States, No. 532.—55 Sup. Ct. Rep., 432; 79 Ad. Op. 446.

In five cases, the Supreme Court, in opinions by Mr. Chief Justice Hughes, decided certain questions as to the validity of the Joint Resolution of the 73rd Congress, adopted June 5, 1933, and of related legislative acts relative to the monetary policy of the United States, particularly in reference to "gold clauses" in national and private obligations for the payment of money.

The effect of the legislation on private obligations was considered in one opinion covering three cases, namely, No. 270, *Norman v. Baltimore and Ohio Railroad Company;* No. 471, *United States et al v. Bankers Trust Company, et al,* and No. 472, *United States et al. v. Bankers Trust Company, et al.*

Public Resolution No. 10, of June 5, 1933, declares that gold clauses are contrary to public policy and provides that obligations, whether heretofore or hereafter made (including obligations of the United States and whether or not such clauses are contained therein), shall be discharged by payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.

Norman v. Baltimore and Ohio, No. 270, involved a suit by the holder of a bond of the Baltimore and Ohio Railroad Company to recover on a matured coupon for $22.50. The bond contained a gold clause reading that payment of principal and interest, at 4½% per annum "will be made . . . in gold coin of the United States of America of or equal to the standard weight and fineness existing on February 1, 1930."

The bondholder sought to recover from the railroad, in a suit brought in a state court in New York, the equivalent value based on the difference in the standard of weight and fineness existing on February 1, 1930, and the standard existing when the coupon matured, alleged to be $38.10. The obligor tendered the face amount of the coupon in legal tender, and defended against the claim for additional payment on the ground that it was authorized and required by Resolution No. 10 to satisfy the obligation in currency which was legal tender at the date of maturity of the bond. The Court of Appeals of New York upheld the Resolution and affirmed judgment for the face amount of the coupon.

In Nos. 471 and 472, the question arose in respect of an issue of bonds providing for payment of "One Thousand Dollars gold coin of the United States of the present standard of weight and fineness," with interest "in like gold coin." The bonds were issued originally under date of May 1, 1903, by St. Louis, Iron Mountain & Southern Railway Company, payable May 1, 1933. The Missouri Pacific Railroad Company acquired the obligor's property in 1917, subject to the mortgage securing the bonds. The latter company is now in bankruptcy under Section 77 of the Bankruptcy Act. The mortgage trustees intervened seeking to have the mortgage debt paid in gold coin of the standard of May 1, 1903. The district court decreed that the bonds were payable at face value in money constituting legal tender.

Before dealing with the contentions of the parties, the learned Chief Justice summarized other legislation having a bearing on the questions involved. This

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included the Emergency Banking Act containing provisions against gold hoarding and requiring delivery of gold coin, gold bullion, and gold certificates to the Treasurer of the United States and payment therefor in lawful currency of an equivalent amount; The Executive Order of March 10, 1933, prohibiting the removal from the United States of gold coin, gold bullion, or gold certificates, except as permitted by regulations of the Treasury; Section 43 of the Agricultural Adjustment Act authorizing the President to fix the weight of the gold dollar in grains nine-tenths fine, and the weight of the silver dollar at a definite ratio to the gold dollar, at such amounts as he finds necessary to stabilize domestic prices or to protect foreign commerce against the adverse effect of foreign currencies; providing further that the gold dollar at the weight fixed should be the standard unit of value, that all forms of money should be maintained at a parity with this standard, and finally, that the weight of the gold dollar should in no event be fixed so as to reduce its then present weight by more than 50 per cent.

The Gold Reserve Act of 1934 was also referred to, providing that the weight of the gold dollar should not be fixed "at more than 60 per centum of its present weight." On January 31, 1934, the President, by Proclamation, declared that he fixed "the weight of the gold dollar to be 15-5/21 grains nine-tenths fine," from and after that date.

Concluding his reference to the legislation, MR. CHIEF JUSTICE HUGHES said:

> We have not attempted to summarize all the provisions of these measures. We are not concerned with their wisdom. The question before the court is one of power, not of policy. And that question touches the validity of these measures at but a single point, that is, in relation to the joint resolution denying effect to "gold clauses" in existing contracts. The resolution must, however, be considered in its legislative setting and in the light of other measures in *pari materia*.

The first phase of the cases to be considered was the proper construction of the gold clauses in the bonds. The obligors contended that the clauses were to be construed not as "gold value" clauses implying payment in the equivalent of gold, if payment in gold coin is impossible. It was also urged in the *St. Louis Iron Mountain case* that the parties intended the clause as protection against depreciation of one form of money in terms of another, and that it was not intended to be operative where all forms of money are maintained at a parity.

The bondholders contended that the clauses were intended to establish a measure of value should gold coin of the weight specified be not in circulation at the time of payment; in short that the clauses were "gold value" clauses.

In dealing with these contentions the Court referred to earlier cases dealing with payments where forms of currency of differing values were lawful. As to these, the Court said:

> The decisions of this court relating to clauses for payment in gold did not deal with situations corresponding to those now presented. Bronson v. Rodes, 7 Wall. 229; Butler v. Horwitz, 7 Wall. 258; Dewing v. Sears, 11 Wall. 379; Trebilcock v. Wilson, 12 Wall. 687; Thompson v. Butler, 95 U. S. 694; Gregory v. Morris, 96 U. S. 619. See, also, the Vaughan and Telegraph, 14 Wall. 258; the Emily Souder, 17 Wall. 666.
>
> The rulings, upholding gold clauses and determining their effect, were made when gold was still in circulation and no act of the Congress prohibiting the enforcement of such clauses had been passed.
>
> In Bronson v. Rodes *supra*, p. 251, the court held that the legal tender acts of 1862 and 1863, apart from any question of their constitutionality, had not repealed or modified the laws for the coinage of gold and silver or the statutory provisions which made those coins a legal tender in all payments.
>
> It followed, said the court, that "there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature."
>
> Accordingly, the contract of the parties for payment in one sort of dollars, which was still in lawful circulation, was sustained.
>
> The case of Trebilcock v. Wilson, *supra*, was decided shortly after the legal tender acts had been held valid. The court again concluded (pp. 695, 696) that those acts applied only to debts which were payable in money generally, and that there were "according to that decision, two kinds of money, essentially different in their nature, but equally lawful."
>
> In that view, said the court, "contracts payable in either, or for the possession of either, must be equally lawful, and, if lawful, must be equally capable of enforcement."

The Court then concluded that the clauses here in question were intended as a measure of value and to protect against depreciation of the currency, and that consequently, their enforceability must be tested by the action of Congress in the light of its constitutional power. On this feature of the case the opinion states:

> We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of $1,000.
>
> We also think that, fairly construed, these clauses were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed.
>
> When these contracts were made they were not repugnant to any action of the Congress.
>
> In order to determine whether effect may now be given to the intention of the parties in the face of the action taken by the Congress, or the contracts may be satisfied by the payment dollar for dollar, in legal tender, as the Congress has now prescribed, it is necessary to consider (1) the power of the Congress to establish a monetary system and the necessary implications of that power; (2) the power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority; and (3) whether the clauses in question do constitute such an interference as to bring them within the range of that power.

Dealing with these various aspects of Congressional power, the power to coin money and regulate its value was directly adverted to. In elaboration of this power, the Court said:

> The Constitution grants to the Congress power "to coin money, regulate the value thereof, and of foreign coin." Art. I, Sec. 8, par. 5. But the court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency.
>
> The court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve "the great objects for which the government was framed,"—"a national government with sovereign powers." McCulloch v. Maryland, 4 Wheat. 316, 404-407; Knox v. Lee, *supra*, pp. 532, 536; Juilliard v. Greenman, *supra*, p. 438.
>
> The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power "to make all laws which shall be necessary and proper for carrying into execution" the other enumerated powers. Juilliard v. Greenman, *supra*, pp. 439, 440.
>
> The Constitution "was designed to provide the same currency, having a uniform legal value in all the States." It was for that reason that the power to regulate the value of money was conferred upon the Federal Government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States.
>
> The States cannot declare what shall be money, or

regulate its value. Whatever power there is over the currency is vested in the Congress.

The effect of the exercise of power on contracts was also discussed:

> Dealing with the specific question as to the effect of the legal tender acts upon contracts made before their passage, that is, those for the payment of money generally, the court, in the legal tender cases, recognized the possible consequences of such enactments in frustrating the expected performance of contracts,—in rendering them "fruitless or partially fruitless." The court pointed out that the exercise of the powers of Congress may affect "apparent obligations" of contracts in many ways.
>
> The Congress may pass bankruptcy acts. The Congress may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo, which may operate seriously upon existing contracts. And the court reasoned that if the legal tender acts "were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law." The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the government, and that no obligation of a contract "can extend to the defeat" of that authority.

The power of Congress to invalidate existing contracts which obstruct the exercise of constitutional power was next considered. In this connection, numerous incidents were cited as illustrative of the principle, and the conclusion reached that, here, as in other fields of Federal power, Congress has power to set aside private contracts interfering with the exercise of its paramount power.

> The reason is manifest. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by "prophetic discernment" to bring within the range of their agreements.
>
> The Constitution recognizes no such limitation, [Phila., Baltimore and Wash. R. R. Co. v. Schubert, 224 U. S., 613, 614]. See, also, United States v. Southern Pacific Company, supra; Sproles v. Binford, 286 U. S. 374, 390, 391; Radio Commission v. Nelson Brothers Company, 289 U. S., 266, 282.
>
> The same reasoning applies to the constitutional authority of the Congress to regulate the currency and to establish the monetary system of the country. If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority, they cannot stand.

In conclusion, the effect of the gold clauses was considered in relation to the monetary policy adopted by Congress. At the threshold of this inquiry, the Court said:

> Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the joint resolution have been pressed, these contentions necessarily are brought. under the dominant principles to which we have referred, to a single and narrow point.
>
> That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy.
>
> Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact.
>
> With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end.
>
> If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means is final.

As indicative of the basis for the action of Congress, the opinion cited the discussion of the effect of a gold clause in widespread use, which appeared in the report of the Committee on Banking and Currency in the House of Representatives, and the determination of Congress as recited in the Joint Resolution itself. Reviewing these findings, the tendency of enforcement of the clauses to encourage hoarding and stimulate exportation of gold were thought to establish that the invalidation of the gold clauses was not without reasonable relation to the adopted monetary policy.

> The Congress in the exercise of its discretion was entitled to consider the volume of obligations with gold clauses, as that fact, as the report of the House committee observed, obviously had a bearing upon the question whether their existence constituted a substantial obstruction to the Congressional policy.
>
> The estimates submitted at the bar indicate that when the joint resolution was adopted there were outstanding $75,000,000,000 or more of such obligations, the annual interest charges on which probably amounted to between $3,000,000,000 and $4,000,000,000.
>
> It is apparent that if these promises were to be taken literally, as calling for actual payment in gold coin, they would be directly opposed to the policy of Congress, as they would be calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of gold coin.
>
> If there were no outstanding obligations with gold clauses, we suppose that no one would question the power of the Congress, in its control of the monetary system, to endeavor to conserve the gold resources of the Treasury, to insure its command of gold in order to protect and increase its reserves, and to prohibit the exportation of gold coin or its use for any purpose inconsistent with the needs of the Treasury. See Ling Su Fan v. United States, supra.
>
> And if the Congress would have that power in the absence of gold clauses, principles beyond dispute compel the conclusion that private parties, or States or municipalities, by making such contracts could not prevent or embarrass its exercise. In that view of the import of the gold clauses, their obstructive character is clear.

Moreover, the enforcement of the gold clauses as a measure of value was also found hostile to the policy of Congress, and subject to prohibition. In this connection, it was pointed out that although devaluation of the dollar had not taken place when the Joint Resolution was adopted, it was nevertheless in prospect, and no constitutional objection is present to prevent invalidation of the gold clauses in anticipation of the fixing of the value of the dollar. Concluding discussion of the Joint Resolution in relation to private bonds, Mr. Chief Justice Hughes emphasized the dislocation of domestic economy which would result by requiring payment of private debts at the rate of $1.69 for each $1.00. In this connection the CHIEF JUSTICE said:

> The devaluation of the dollar placed the domestic economy upon a new basis. In the currency as thus provided, States and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard.
>
> Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their "gold bonds" must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another.
>
> It is common knowledge that the bonds issued by these obligors have generally contained gold clauses, and presumably they account for a large part of the outstanding obligations of that sort.
>
> It is also common knowledge that a similar situation exists with respect to numerous industrial corporations that have issued their "gold bonds" and must now receive payments for their products in the existing currency.
>
> It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy which would be caused by such a disparity of conditions in which, it is insisted, those debtors under gold clauses should be required to pay one dollar and sixty-nine cents in currency while respectively receiving their taxes, rates, charges and prices on the basis of one dollar of that currency.
>
> We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right.
>
> We are concerned with the constitutional power of the

Congress over the monetary system of the country and its attempted frustration.

Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts.

In the light of abundant experience, the Congress was entitled to choose such a uniform monetary system, and to reject a dual system, with respect to all obligations within the range of the exercise of its constitutional authority.

The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority.

Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed.

Gold Certificate Case

In *Nortz v. United States*, No. 531, the claimant sought to recover in the Court of Claims, damages alleged to have been sustained by reason of his surrender of gold certificates under the Emergency Banking Act of March 9, 1933 and the Order of the Secretary of the Treasury of December 28, 1933, and January 15, 1934. This claim was made upon the ground that the certificates surrendered were redeemable in gold, whereas the currency paid to the claimant on such surrender was not redeemable in gold. Hence judgment for $64,334.07 was demanded, as the alleged difference between the nominal value of currency issued to the claimant and the value of gold certificates of the face value of $106,300.

The Court of Claims certified questions: (1) as to whether the holder of gold certificates, not licensed to hold them under the law, who has surrendered them under protest and has received legal tender currency of the equivalent face amount, is entitled to receive from the United States a further sum, by reason of the fact that the weight of a gold dollar was 25.8 grains, 0.9 fine, and the market price thereof at the time of surrender, was in excess of the currency so received; (2) whether the gold certificate is an express contract of the United States in its corporate capacity which entitled the owner to sue thereon in the Court of Claims; (3) whether the provisions of the Emergency Banking Act and the order of the Secretary of the Treasury, requiring surrender of gold certificates in exchange for currency of an equivalent amount, not redeemable in gold, amount to a taking of property under the Fifth Amendment.

The claimant argued that, by reason of his ownership of gold certificates, a contract arose between him and the United States, whereby the Government agreed to redeem the same in gold of a specified weight and fineness; that the provisions of law and the order of the Secretary of the Treasury requiring delivery of the certificates, in exchange for currency of an equivalent amount, not redeemable in gold, is a repudiation of a contract and a taking of property under the Fifth Amendment, for which the claimant is entitled to just compensation; that the issuance of currency not redeemable in gold, of a face amount equal to the face value of the gold certificates, was not just compensation under the Fifth Amendment, and that the Act of Congress and Executive Orders, specifying in effect that such currency was to be deemed just compensation are unconstitutional, and that the petitioner was entitled to receive a further sum based on the market value of gold on January 17, 1934, the date of surrender of the Certificates.

The Government, assuming jurisdiction of the Court of Claims, argued that the gold certificates, even if regarded as contracts, are not warehouse receipts for a specified quantity of gold, but are monetary obligations; that contractual obligations to pay a specified number of dollars could be lawfully liquidated by the payment of any legal tender currency, at the time of surrender of the certificates, and hence the obligation, if contractual, has been fully satisfied; that the plaintiff has sustained no damages, since even if the plantiff had received gold, he would have been compelled to surrender it; that the petition attempts to plead a cause of action on an express contract, and hence the plaintiff may not in this suit claim compensation for the taking of property by eminent domain; that even if the plaintiff had any rights on the theory of eminent domain, he has received full compensation. The Government also argued that the Court of Claims has no jurisdiction, as the gold certificates did not constitute contracts of the United States in its corporate or proprietary capacity.

In considering these contentions the Court sustained the contention of the Government that the certificates are not to be deemed warehouse receipts for gold, but are currency.

> Gold certificates under this legislation were required to be issued in denominations of dollars and called for the payment of dollars. These gold certificates were currency. They were not less so because the specified number of dollars were payable in gold coin, of the coinage of the United States. Being currency, and constituting legal tender, it is entirely inadmissable to regard the gold certificates as warehouse receipts. They were not contracts for a certain quantity of gold as a commodity. They called for dollars, not bullion.

As to the contention that the claimant was entitled to judgment by way of just compensation, the Court was of the opinion that no actual loss was shown. As to this, MR. CHIEF JUSTICE HUGHES said:

> Plaintiff explicitly states his concurrence in the Government's contention that the Congress has complete authority to regulate the currency system of the country. He does not deny that, in exercising that authority, the Congress had power "to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates." Nor does he deny that the Congress had authority "to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession." These powers could not be successfully challenged. Knox vs. Lee, 12 Wall. 547; Juilliard vs. Greenman, 110 U. S. 421; Ling Su Fan vs. United States, 218 U. S. 302; Norman vs. Baltimore & Ohio R. R. Co., decided this day. The question plaintiff presents is thus simply one of "just compensation."
>
> The asserted basis of plaintiff's claim for actual damages is that, by the terms of the gold certificates, he was entitled, on January 17, 1934, to receive gold coin. It is plain that he can not claim any better position than that in which he would have been placed had the gold coin then been paid to him. But, in that event, he would have been required, under the applicable legislation and orders, forthwith to deliver the gold coin to the Treasury. Plaintiff does not bring himself within any of the stated exceptions. He did not allege in his petition that he held a Federal license to hold gold coin, and the first question submitted to us by the Court of Claims negatives the assumption of such a license. Had plaintiff received gold coin for his certificates, he would not have been able, in view of the legislative inhibition, to export it or deal in it. Moreover, it is sufficient in the instant case to point out that on January 17, 1934, the dollar had not been devalued. Or, as plaintiff puts it, "at the time of the presentation of the certificates by petitioner, the gold content of the United States dollar had not been deflated" and the provision of the act of March 14, 1900, supra, fixing that content at 25.8 grains, nine-tenths fine, as the standard unit of money with which "all forms of money issued or coined by the United States" were to be maintained at a parity, was "still in effect." The currency paid to the plaintiff for his gold certificates was then on a parity with that standard of value. It can not be said that, in receiving the currency on that basis, he sustained any actual loss.
>
> To support his claim, plaintiff says that on January 17,

1934, "an ounce of gold was of the value at least of $33.43." His petition so alleged and he contends that the allegation was admitted by the demurrer. But the assertion of that value of gold in relation to gold coin in this country, in view of the applicable legislative requirements, necessarily involved a conclusion of law. Under those requirements, there was not on January 17, 1934, a free market for gold in the United States or any market available to the plaintiff for the gold coin to which he claims to have been entitled. Plaintiff insists that gold had an intrinsic value and was bought and sold in the world markets. But plaintiff had no right to resort to such markets. By reason of the quality of gold coin, "as a legal tender and as a medium of exchange," limitations attached to its ownership, and the Congress could prohibit its exportation and regulate its use.

Liberty Bond Case

Perry v. United States, No. 532, came before the Court on a certificate from the Court of Claims. It involved the validity of the Joint Resolution in relation to obligations of the United States. It arose in a suit filed by Perry to recover on a Fourth Liberty Loan 4¼% Gold Bond in the amount of $10,000, called for redemption by the Secretary of the Treasury. The bond contained the promise of the United States to pay the principal thereof "in United States gold coin of the present standards of value," and interest thereon in like gold coin.

At the time of issuance of the bond a dollar in gold consisted of 25.8 grains of gold 0.9 fine.

Upon presentation of the bond for redemption, pursuant to a call by the Secretary of the Treasury, the claimant, Perry, demanded payment of 10,000 gold dollars each containing 25.8 grains of gold 0.9 fine. Upon the Government's refusal to pay in accordance with this demand the claimant then demanded 258,000 grains of gold 0.9 fine, or gold of equivalent value of any fineness, or of 16,931.25 gold dollars, each containing 15 5/25 grains of gold 0.9 fine, or 16,931.25 dollars in legal tender currency.

The Government refused to accede to any of these demands, but offered payment of $10,000 in legal tender money. Thereupon, the claimant filed a petition in the Court of Claims for damages in the sum of $16,931.25. To this petition the Government demurred.

The Court of Claims certified the following questions:

"1. Is the claimant, being the holder and owner of a Fourth Liberty Loan 4¼ per cent bond of the United States, of the principal amount of $10,000, issued in 1918, which was payable on and after April 15, 1934, and which bond contained a clause that the principal is 'payable in United States gold coin of the present standard of value,' entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bond?

"2. Is the United States, as obligor in a Fourth Liberty Loan 4¼ per cent gold bond, series of 1933-1938, as stated in Question One liable to respond in damages in a suit in the Court of Claims on such bond as an express contract, by reason of the change in or impossibility of performance in accordance with the tenor thereof, due to the provisions of Public Resolution No. 10, Seventy-third Congress, abrogating the gold clause in all obligations?"

The claimant argued: (1) that the proper construction of the gold clause in the bond is not that it prescribes a method of payment, but that it *is a measure* of the obligation; (2) that he was entitled to recover an amount in legal tender currency equivalent to the value of 10,000 gold dollars each containing 25.8 grains of gold 0.9 fine, or equivalent to the value of 258,000 grains of gold 0.9 fine; (3) that Public Resolution No. 10 is unconstitutional and void (a) as in direct violation of Section 4 of The Fourteenth Amendment; (b) that no provision of the Constitution authorizes the legislation; (c) that it violates the Fifth Amendment in that it takes property without due process of law; (4) that the claimant is entitled to recover just compensation for the taking of property for public use; and finally, that the Court of Claims has jurisdiction.

The Government contended that Public Resolution No. 10 is constitutional, because there was a reasonable basis for the determination that the gold clause is contrary to public policy and an obstruction to the exercise of the monetary and other powers of Congress. In addition, it argued that the Resolution is within the power of Congress over coinage and currency, the power of borrow money, and the power over foreign and domestic commerce and international relations. Finally, it argued that the suit was not within the jurisdiction of the Court of Claims.

As to the proper construction of the clause in the bond, the Court concluded, as it had in *The Norman case*, that it was intended as a measure of value.

> This obligation must be fairly construed. The *"present* standard of value" stood in contradistinction to a *lower* standard of value. The promise obviously was intended to afford protection against loss. That protection was sought to be secured by setting up a standard or measure of the government's obligation. We think that the reasonable import of the promise is that it was intended to assure one who lent his money to the government and took its bond that he would not suffer loss through depreciation in the medium of payment.

Having thus determined the intent of the clause, the Court considered the power of Congress to invalidate its terms. Denying that Congress has power to alter the terms of its bonds, MR. CHIEF JUSTICE HUGHES said:

> There is no question as to the power of the Congress to regulate the value of money, that is, to establish a monetary system and thus to determine the currency of the country. The question is whether the Congress can use that power so as to invalidate the terms of the obligations which the government has theretofore issued in the exercise of the power to borrow money on the credit of the United States.
>
> In attempted justification of the Joint Resolution in relation to the outstanding bonds of the United States, the government argues that "earlier Congresses could not validly restrict the Seventy-third Congress from exercising its constitutional powers to regulate the value of money, borrow money, or regulate foreign and interstate commerce"; and, from this premise, the government seems to deduce the proposition that when, with adequate authority, the government borrows money and pledges the credit of the United States, it is free to ignore that pledge and alter the terms of its obligations in case a later Congress finds their fulfillment inconvenient.
>
> The government's contention thus raises a question of far greater importance than the particular claim of the plaintiff. On that reasoning, if the terms of the government's bond as to the standard of payment can be repudiated, it inevitably follows that the obligations as to the amount to be paid may also be repudiated. The contention necessarily imports that the Congress can disregard the obligations of the government at its discretion and that, when the government borrows money, the credit of the United States is an illusory pledge.
>
> We do not so read the Constitution. There is a clear distinction between the power of the Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority, and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the Constitution confers.
>
> In authorizing the Congress to borrow money, the Constitution empowers the Congress to fix the amount to be borrowed and the terms of payment. By virtue of the power to borrow money *"on the credit of the United States,"* the Congress is authorized to pledge that credit as an assurance of payment as stipulated—as the highest assurance the government can give, its plighted faith.
>
> To say that the Congress may withdraw or ignore that pledge is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This court has given no sanction to such a conception of the obligations of our government.

The contention in favor of the Joint Resolution

that the Government cannot by contract restrict the exercise of its sovereign power was rejected, as inconsistent with other powers, as the power to borrow money and to pledge the credit of the United States.

> The argument in favor of the joint resolution, as applied to government bonds, is in substance that the government cannot by contract restrict the exercise of a sovereign power. But the right to make binding obligations is a competence attaching to sovereignty.
>
> In the United States, sovereignty resides in the people, who act through the organs established by the Constitution. Chisholm v. Georgia, 2 Dall, 419, 471; Penhallow v. Doane's Administrators, 3 Dall, 54, 93; McCulloch v. Maryland, 4 Wheat, 316, 404, 405; Yick Wo v. Hopkins, 118 U. S. 356, 370.
>
> The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared.
>
> The powers conferred upon the Congress are harmonious. The Constitution gives to the Congress the power to borrow money on the credit of the United States, an unqualified power, a power vital to the government,—upon which in an extremity its very life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged.
>
> Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists and, despite infirmities of procedure, remains binding upon the conscience of the sovereign. Lynch v. United States, supra, pp. 580, 582.
>
> The Fourteenth Amendment, in its fourth section, explicitly declares:
>
> "The validity of the public debt of the United States, authorized by law, * * * shall not be questioned."
>
> While this provision was undoubtedly inspired by the desire to put beyond question the obligations of the government issued during the Civil War, its language indicates a broader connotation. We regard it as confirmatory of a fundamental principle which applies as well to the government bonds in question, and to others duly authorized by the Congress, as to those issued before the amendment was adopted. Nor can we perceive any reason for not considering the expression "the *validity* of the public debt" as embracing whatever concerns the integrity of the public obligations.
>
> We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to over-ride the obligation created by the bond in suit, went beyond the Congressional power.

Having thus declared the binding effect of the Government's obligations and that Congress had gone beyond its power in attempting to override the obligations of Government bonds, the Court turned to the question of the claimant's damages. In this connection the Court referred to the method on which the claimant computed his claim, i. e., a calculation based on the difference between the gold weight of the dollar before and after devaluation. Rejecting the propriety of this test, and denying that any actual loss had been established, MR. CHIEF JUSTICE HUGHES said:

> But the change in the weight of the gold dollar did not necessarily cause loss to the plaintiff of the amount claimed. The question of actual loss cannot fairly be determined without considering the economic situation at the time the government offered to pay him the $10,000, the face of his bond, in legal tender currency.
>
> The case is not the same as if gold coin had remained in circulation. That was the situation at the time of the decisions under the Legal Tender Acts of 1862 and 1863.
>
> Plaintiff demands the "equivalent" in currency of the gold coin promised. But "equivalent" cannot mean more than the amount of money which the promised gold coin would be worth to the bondholder for the purposes for which it could legally be used. That equivalence or worth could not properly be ascertained save in the light of the domestic and restricted market which the Congress had lawfully established.
>
> In the domestic transactions to which the plaintiff was limited, in the absence of special license, determination of the value of the gold coin would necessarily have regard to its use as legal tender and as a medium of exchange under a single monetary system with an established parity of all currency and coins. And in view of the control of export and foreign exchange, and the restricted domestic use, the question of value, in relation to transactions legally available to the plaintiff, would require a consideration of the purchasing power of the dollars which the plaintiff has received.
>
> Plaintiff has not shown, or attempted to show, that in relation to buying power he has sustained any loss whatever. On the contrary, in view of the adjustment of the internal economy to the single measure of value as established by the legislation of the Congress, and the universal availability and use throughout the country of the legal tender currency in meeting all engagements, the payment to the plaintiff of the amount which he demands would appear to constitute not a recoupment of loss in any proper sense but an unjustified enrichment.
>
> Plaintiff seeks to make his case solely upon the theory that by reason of the change in the weight of the dollar he is entitled to one dollar and sixty-nine cents in the present currency for every dollar promised by the bond, regardless of any actual loss he has suffered with respect to any transaction in which his dollars may be used. We think that position is untenable.
>
> In the view that the facts alleged by the petition fail to show a cause of action for actual damages, the first question submitted by the Court of Claims is answered in the negative. It is not necessary to answer the second question.

Mr. Justice Stone filed a separate opinion in this case. He agreed that the answer to the first question should be "no" but thought that the opinion should be confined to that and not attempt to answer any other question. He said:

> I do not understand the Government to contend that it is any the less bound by the obligation than a private individual would be, or that it is free to disregard it except in the exercise of the constitutional power "to coin money" and "regulate the value thereof." In any case, there is before us no question of default apart from the regulation by Congress of the use of gold as currency.
>
> While the Government's refusal to make the stipulated payment is a measure taken in the exercise of that power, this does not disguise the fact that its action is to that extent a repudiation of its undertaking. As much as I deplore this refusal to fulfill the solemn promise of bonds of the United States, I cannot escape the conclusion, announced for the Court, that in the situation now presented, the Government, through the exercise of its sovereign power to regulate the value of money, has rendered itself immune from liability for its action. To that extent it has relieved itself of the obligation of its domestic bonds, precisely as it has relieved the obligors of private bonds in No. 270, *Norman* v. *Baltimore & Ohio R. R. Co.*, decided this day.
>
> In this posture of the case it is unnecessary, and I think undesirable, for the Court to undertake to say that the obligation of the gold clause in Government bonds is greater than in the bonds of private individuals, or that in some situation not described, and in some manner and in some measure undefined, it has imposed restrictions upon the future exercise of the power to regulate the currency. I am not persuaded that we should needlessly intimate any opinion which implies that the obligation may so operate, for example, as to interpose a serious obstacle to the adoption of measures for stabilization of the dollar, should Congress think it wise to accomplish that purpose by resumption of gold payments, in dollars of the present or any other gold content less than that specified in the gold clause, and by the re-establishment of a free market for gold and its free exportation. . . .
>
> Moreover, if the gold clause be viewed as a gold value contract, as it is in *Norman* v. *Baltimore & Ohio R. R. Co.*, *supra*, it is to be noted that the Government has not prohibited the free use by the bondholder of the paper money equivalent of the gold clause obligation; it is the prohibition, by the Joint Resolution of Congress, of payment of the increased number of depreciated dollars required to make up the full equivalent, which alone bars recovery. In that case it would seem to be implicit in our decision that the prohibition, at least in the present situation, is itself a constitutional exercise of the power to regulate the value of money.
>
> I therefore do not join in so much of the opinion as may be taken to suggest that the exercise of the sovereign power to borrow money on credit, which does not override the sovereign immunity from suit, may nevertheless pre-

clude or impede the exercise of another sovereign power, to regulate the value of money; or to suggest that although there is and can be no present cause of action upon the repudiated gold clause, its obligation is nevertheless, in some manner and to some extent, not stated, superior to the power to regulate the currency which we now hold to be superior to the obligation of the bonds.

Dissenting Opinion by Mr. Justice McReynolds

MR. JUSTICE MCREYNOLDS delivered a dissenting opinion, in which MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER joined. Limitations of time and space do not permit the insertion here of the entire text of the dissenting opinion. Its purport may be appreciated from the reading of the following excerpts:

MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, MR. JUSTICE BUTLER and I conclude that, if given effect, the enactments here challenged will bring about confiscation of property rights and repudiation of national obligations. Acquiescence in the decisions just announced is impossible; the circumstances demand statement of our views. "To let oneself slide down the easy slope offered by the course of events and to dull one's mind against the extent of the danger, . . . that is precisely to fail in one's obligation of responsibility."

* * *

The clause is not new or obscure or discolored by any sinister purpose. For more than 100 years our citizens have employed a like agreement. During the War between the States, its equivalent "payable in coin" aided in surmounting financial difficulties. From the housetop men proclaimed its merits while bonds for billions were sold to support the World War. The Treaty of Versailles recognized it as appropriate and just. It appears in the obligations which have rendered possible our great undertakings—public-works, railroads, buildings.

The learned Justice made reference to the decision of the Permanent Court of International Justice in the matter of the Serbian and Brazilian Loans; also the decision of the House of Lords in Feist vs. Societé Intercommunale Belge d'Electricité; and former decisions of the Supreme Court of the United States which have been referred to in the briefs, in the argument, and in the majority opinion, and in reference to these cases said:

It is true to say that the gold clauses "were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by payment of less than that prescribed." Furthermore, they furnish means for computing the sum payable in currency if gold should become unobtainable. The borrower agrees to repay in gold coin containing 25.8 grains to the dollar, and if this cannot be secured the promise is to discharge the obligation by paying for each dollar loaned the currency value of that number of grains. Thus, the purpose of the parties will be carried out. Irrespective of any change in currency, the thing loaned or an equivalent will be returned—nothing more, nothing less. The present currency consists of promises to pay dollars of 15 5/21 grains; the Government procures gold bullion on that basis. The calculation to determine the damages for failure to pay in gold would not be difficult. *Gregory* v. *Morris* points the way.

Reviewing at length the legislation in regard to the issue of gold certificates, the requirement that the same be surrendered to the Treasury on the payment of an equivalent amount in lawful money of the United States, the legislation in regard to the decrease of the so-called content of the dollar, the provisions of the Agricultural Adjustment Act, the Gold Reserve Act, and the Resolution of June 5, 1933, the learned Justice proceeded to summarize the issues and the contentions of the parties and the opposing views of the majority and of the minority of the Court as follows:

Four causes are here for decision. Two of them arise out of corporate obligations containing gold clauses—railroad bonds. One is based on a United States Fourth Liberty Loan bond of 1918, called for payment April 15, 1934, containing a promise to pay "in United States gold coin of the present standard of value" with interest in like gold coin. Another involves gold certificates, series 1928, amounting to $106,300.

As to the corporate bonds the defense is that the gold clause was destroyed by the Resolution of June 5, 1933; and this view is sustained by the majority of the Court.

It is insisted that the agreement, in the Liberty Bond, to pay in gold also was destroyed by the Act of June 5, 1933. This view is rejected by the majority; but they seem to conclude that because of the action of Congress in declaring the holding of gold unlawful, no appreciable damage resulted when payment therein or the equivalent was denied.

Concerning the gold certificates it is ruled that if upon presentation for redemption gold coin had been paid to the holder, as promised, he would have been required to return this to the Treasury. He could not have exported it or dealt with it. Consequently he sustained no actual damage.

There is no challenge here of the power of Congress to adopt such proper "Monetary Policy" as it may deem necessary in order to provide for national obligations and furnish an adequate medium of exchange for public use. The plan under review in the Legal Tender Cases was declared within the limits of the Constitution but not without a strong dissent. The conclusions there announced are not now questioned; and any abstract discussion of Congressional power over money would only tend to befog the real issue.

The fundamental problem now presented is whether recent statutes passed by Congress in respect of money and credits were designed to attain a legitimate end. Or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily designed to destroy private obligations, repudiate national debts and drive into the Treasury all gold within the country in exchange for inconvertible promises to pay, of much less value.

Considering all the circumstances, we must conclude they show that the plan disclosed is of the latter description and its enforcement would deprive the parties before us of their rights under the Constitution. Consequently, the Court should do what it can to afford adequate relief.

* * *

This Court has not heretofore ruled that Congress may require the holder of an obligation to accept payment in subsequently devalued coins, or promises by the Government to pay in such coins. The legislation before us attempts this very thing. If this is permissible then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits appear on the Treasury books. Instead of $2,800,000,000, as recently reported, perhaps $20,000,000,000, maybe, enough to cancel the public debt, maybe more!

The power to issue bills and "regulate values" of coin cannot be so enlarged as to authorize arbitrary action, whose immediate purpose and necessary effect is destruction of individual rights. As this Court has said a "power to regulate is not a power to destroy." 154 U. S. 362, 398. The Fifth Amendment limits all governmental powers. We are dealing here with a debased standard, adopted with the definite purpose to destroy obligations. Such arbitrary and oppressive action is not within any Congressional power heretofore recognized.

* * *

The Agricultural Adjustment Act of May 12th discloses a fixed purpose to raise the nominal value of farm products by depleting the standard dollar. It authorized the President to reduce the gold in the standard, and further provided that all forms of currency shall be legal tender. The result expected to follow was increase in nominal values of commodities and depreciation of contractual obligations. The purpose of Section 43 incorporated by the Senate as an amendment to the House Bill was clearly stated by the Senator who presented it. It was the destruction of lawfully acquired rights.

* * *

Apparently in the opinion of the majority the gold clause in the Liberty bond withstood the June 5 Reso-

lution notwithstanding the definite purpose to destroy them. We think that in the circumstances Congress had no power to destroy the obligations of the gold clauses in private obligations. The attempt to do this was plain usurpation, arbitrary and oppressive.

* * *

Again, if effective, the direct, primary and intended result of the Resolution will be the destruction of valid rights lawfully acquired. There is no question here of the indirect effect of lawful exercise of power. And citations of opinions which upheld such indirect effects are beside the mark. This statute does not "work harm and loss to individuals indirectly," it destroys directly. Such interference violates the Fifth Amendment; there is no provision for compensation. If the destruction is said to be for the public benefit proper compensation is essential; if for private benefit the due process clause bars the way.

* * *

Ling Su Fan v. *United States*, 218 U. S. 302, supports the power of the legislature to prevent exportation of coins without compensation. But this is far from saying that the legislature might have ordered destruction of the coins without compensating the owners or that they could have been required to deliver them up. . . .

* * *

Congress may coin money; also it may borrow money. Neither power may be exercised so as to destroy the other; the two clauses must be so construed as to give effect to each. Valid contracts to repay money borrowed cannot be destroyed by exercising power under the coinage provision. The majority seem to hold that the Resolution of June 5th did not affect the gold clauses in bonds of the United States. Nevertheless we are told that no damage resulted to the holder now before us through the refusal to pay one of them in gold coin of the kind designated or its equivalent. This amounts to a declaration that the Government may give with one hand and take away with the other. Default is thus made both easy and safe!

Turning now specially to the gold certificate case, it was stated:

These were contracts to return gold left on deposit; otherwise to pay its value in the currency. Here the gold was not returned; there arose the obligation of the Government to pay its value. The Court of Claims has jurisdiction over such contracts. Congress made it impossible for the holder to receive and retain the gold promised him; the statute prohibited delivery to him. The contract being broken the obligation was to pay in currency the value of 25.8 grains of gold for each dollar called for by the certificate. For the Government to say, we have violated our contract but have escaped the consequences through our own statute, would be monstrous. In matters of contractual obligation the Government can not legislate so as to excuse itself.

The position was fortified by quotations from the words of Alexander Hamilton (3 Hamilton's Works, 518, 519), and from the words of Chief Justice Waite and Mr. Justice Strong in the Sinking Fund Cases.

The dissenting opinion closed with the following:

Counsel for the Government and railway companies asserted with emphasis that incalculable financial disaster would follow refusal to uphold, as authorized by the Constitution, impairment and repudiation of private obligations and public debts. Their forecast is discredited by manifest exaggeration. But, whatever may be the situation now confronting us, it is the outcome of attempts to destroy lawful undertakings by legislative action; and this we think the Court should disapprove in no uncertain terms.

Under the challenged statutes it is said the United States have realized profits amounting to $2,800,000,000. But this assumes that gain may be generated by legislative fiat. To such counterfeit profits there would be no limit; with each new debasement of the dollar they would expand. Two billions might be ballooned indefinitely—to twenty, thirty, or what you will.

Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling.

Legislative Power—Congressional Investigations—Power to Punish for Contempt

The power of the Senate to punish for contempt, for acts which obstruct the performance of legislative duties, includes power to punish for a past and completed act of that character.

Jurney v. MacCracken, 79 Adv. Op., 405; 55 Sup. Ct. Rep., 375.

This case involves a question as to the power of the Senate to punish witnesses for contempt. The petitioner was arrested on February 12, 1934, under a warrant after he had declined to appear before the bar of the Senate in response to a citation served on him under Resolution 172, adopted by the Senate on February 5, 1934. The resolution required the issuance of a citation to the petitioner directing him and certain others to show cause why they should not be punished for contempt of the Senate, on account of the destruction and removal of certain papers, files, and memorandums from the petitioners files, after a subpoena had been served on him, as shown by the report of the Committee Investigating Ocean and Air Mail contracts.

The petitioner obtained a writ of *habeas corpus* in the Supreme Court of the District of Columbia, against the respondent, Sergeant-at-Arms of the Senate. On demurrer to the petition the trial court discharged the writ and dismissed the petition. On appeal the Court of Appeals reversed the judgment and directed the release of the petitioner. On certiorari the Supreme Court reversed the latter, in an opinion by MR. JUSTICE BRANDEIS. In the opinion it is pointed out that the sole question involved is the power of the Senate to punish for the alleged contempt.

At the outset of the discussion attention was called to the fact that it was conceded that the Senate was engaged in an inquiry which it had constitutional power to make; that the Committee had authority to require the production of papers as a necessary incident of the power of legislation; and that the Senate had the power to coerce their production by means of arrest. The petitioner's sole contention was that the Senate was without power to arrest him with a view to punishing him, because the act complained of—the alleged destruction and removal of the papers after the service of the subpoena—was "the past commission of a completed act which prior to the arrest and the proceedings to punish had reached such a stage of finality that it could not longer affect the proceedings of the Senate or any Committee thereof, and which, and the affects of which, had been undone long before the arrest."

In the Court's summary of the allegations of the petition for *habeas corpus*, it appeared that the petitioner, after the service of a subpoena *duces tecum* on January 31, 1934, had permitted one Givven, a representative of Western Air Express, on February 1, 1934, to examine, without supervision, the files containing papers of that company, and authorized him to remove therefrom papers which did not relate to air mail contracts. Givven, in fact, removed some papers which did relate to air mail contracts. On the same day certain papers were taken from the files by one Brittin without petitioner's knowledge, but with the consent of his partner. These were subsequently torn into pieces by Brittin with a view to their destruction.

The petitioner had offered to produce all papers which he lawfully could, but stated that many of them were privileged communications between himself, as an attorney, and his clients, and that until the privilege was waived by the clients he must exercise his own

judgment as to what papers were within the privilege. Later the clients waived the privilege and the petitioner then promptly made available to the Committee all papers then remaining in the files. On February 3, after a request therefor by the petitioner, Givven restored to the files what he stated were all the papers taken by him. The petition further averred that, prior to the citation for contempt, the petitioner had produced and delivered to the Senate: "to the best of his ability, knowledge and belief, every paper of every kind and description in his possession or under his control, relating in any way to air mail and ocean mail contracts; (and that) on February 5, 1934 . . . all of said papers were turned over and delivered to said Senate Committee and since that date they have been, and they now are, in the possession of said Committee."

Dealing with the principal contention of petitioner that the power to punish for contempt may never be exerted, in the case of a private citizen, solely *qua* punishment, the Court declared that it rests on a misconception of the limits on the power. As to this contention, MR. JUSTICE BRANDEIS said:

> The argument is that the power may be used by the legislative body merely as a means of removing an existing obstruction to the performance of its duties; that the power to punish ceases as soon as the obstruction has been removed, or its removal has become impossible; and hence that there is no power to punish a witness who, having been requested to produce papers, destroys them after service of the subpoena. The contention rests upon a misconception of the limitations upon the power of the Houses of Congress to punish for contempt. It is true that the scope of the power is narrow. No act is so punishable unless it is of a nature to obstruct the performance of the duties of the legislature. There may be lack of power, because, as in *Kilbourn v. Thompson*, 103 U. S. 168, there was no legislative duty to be performed; or because, as in *Marshall v. Gordon*, 243 U. S. 521, the act complained of is deemed not to be of a character to obstruct the legislative process. But, where the offending act was of a nature to obstruct the legislative process, the fact that the obstruction has since been removed, or that its removal has become impossible is without legal significance.
>
> The power to punish a private citizen for a past and completed act was exerted by Congress as early as 1795; and since then it has been exercised on several occasions. It was asserted, before the Revolution, by the colonial assemblies, in imitation of the British House of Commons; and afterwards by the Continental Congress and by state legislative bodies. In *Anderson v. Dunn*, 6 Wheat. 204, decided in 1821, it was held that the House had power to punish a private citizen for an attempt to bribe a member. No case has been found in which an exertion of the power to punish for contempt has been successfully challenged on the ground that, before punishment, the offending act had been consummated or that the obstruction suffered was irremediable. The statements in the opinion in *Marshall v. Gordon*, supra, upon which MacCracken relies, must be read in the light of the particular facts. It was there recognized that the only jurisdictional test to be applied by the court is the character of the offence; and that the continuance of the obstruction, or the likelihood of its repetition, are considerations for the discretion of the legislators in meting out the punishment.
>
> Here, we are concerned, not with an extension of congressional privilege, but with vindication of the established and essential privilege of requiring the production of evidence. For this purpose, the power to punish for a past contempt is an appropriate means. . . . The apprehensions expressed from time to time in congressional debates, in opposition to particular exercises of the contempt power concerned, not the power to punish, as such, but the broad, undefined privileges which it was believed might find sanction in that power. The ground for such fears has since been effectively removed by the decisions of this Court which hold that assertions of congressional privilege are subject to judicial review, *Kilbourn v. Thompson, supra;* and that the power to punish for contempt may not be extended to slanderous attacks which present no immediate obstruction to legislative processes.

In conclusion, the Court referred to the petitioner's contention that the act was not punishable, because the obstruction, if any, to the legislative processes had been removed, before the contempt proceedings were instituted. As to this contention, however, the Court pointed out that it was pertinent to the question of guilt rather than of senatorial power, and emphasized that the latter question is the only one presented for a ruling. In regard to this MR. JUSTICE BRANDEIS said:

> This contention goes to the question of guilt, not to that of the jurisdiction of the Senate. The contempt with which MacCracken is charged is "the destruction and removal of certain papers." Whether he is guilty, and whether he has so far purged himself of contempt that he does not now deserve punishment, are the questions which the Senate proposes to try. The respondent to the petition did not, by demurring, transfer to the court the decision of those questions. The sole function of the writ of habeas corpus is to have the court decide whether the Senate has jurisdiction to make the determination which it proposes.

Mr. Justice McReynolds took no part in the case.

The case was argued by Mr. Leslie C. Garnett for the petitioner, Mr. Frank J. Hogan for respondent, and Hatton W. Sumners as *amicus curiae* for the House of Representatives.

List of Uniform Acts Introduced in 1935

American Bar Association headquarters have been informed that the following uniform acts, recommended by the Conference of Commissioners on Uniform State Laws, have been introduced in state legislatures during their current sessions. Information as to other acts which have been introduced but which are not here listed will be appreciated and may be sent to Will Shafroth, Chairman of Publicity Committee, 1140 N. Dearborn St., Chicago.

Arkansas—Act to secure attendance of witness from without the state in criminal cases (Passed), Machine gun, Criminal extradition, Narcotic drug.

Alabama—Firearms, Machine gun.

Arizona—Criminal extradition.

California—Criminal extradition.

Connecticut—Trust receipts, Principal and Income, Proof of Statute, Extradition of persons of unsound mind.

Idaho—Chauffeurs' and Drivers' License Act; the proof of Statutes Act; the Narcotic Act; the Uniform Machine Gun Act.

Indiana—Amendment to warehouse receipts, Bills of Lading, Amendment to Sales act, Uniform partnership, Limited partnership, Trust receipts, Conditional Sales, Machine gun, Criminal extradition, Proof of statutes, Act to secure attendance of witnesses from without the state in criminal cases, Extradition of persons of unsound mind.

Maryland—Narcotic drug, Trust receipts, Criminal extradition, Act to secure attendance of witnesses in criminal cases.

Maine—Stock transfer, Narcotic drug, Trust receipts, Proof of statute.

New York—Amendment to sales act, Amendment to bills of lading, Criminal extradition.

North Dakota—Narcotic drug, Motor vehicle operator's and chauffeur's license.

Pennsylvania—Amendment to warehouse receipts, Amendment to sales, Trust receipts.

Ohio—Declaratory judgments, Firearms, Act to secure attendance of witnesses from without the state in criminal cases.

Texas—Criminal extradition, Act to secure attendance of witnesses from without the state in criminal cases, Machine gun, Narcotic drug, Firearms.

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A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

FEDERAL Tax Handbook 1934-1935. By Robert H. Montgomery. 1935 New York: The Ronald Press. The 1934-1935 edition of Montgomery's Federal Tax Handbook, like its long list of predecessors, is one of the most useful volumes that the lawyer, accountant, or business man can have at hand for the variety of federal tax problems that increase with each year. Busy tax practitioners, as well as those who need solution of such problems only occasionally, will find it a very satisfactory ready reference book. These volumes, moreover, issued since 1917 in new editions as made necessary by the new taxing acts, have been notable for their highly personal character and the salty comment with which the author has sprinkled subjects otherwise somewhat tasteless. Many pages yield asides, advice, caution, praise for sound rulings or decisions, scorn for bad ones, philosophy, or prophecy. Instead of a mere statement that the Board of Tax Appeals in a certain case computed depreciation in a certain manner, the author quotes the language with relish, observing that it "is remarkable as much for its wisdom as for its literary flavor." Or he says, "the duty of the Treasury and the Board is becoming increasingly illogical with respect to what constitutes the accrual method of accounting." By examples he proves his point. There is almost no subject within the scope of the book that is not enriched by the author's experience, vision, and ingenious mind.

This edition is a competent successor to previous editions. Decisions and rulings added since the last edition are included, and the volume contains adequate discussions of the changes made necessary by the 1934 Act. Nor is this volume any exception to the rule that the Montgomery prefaces are read by almost everyone familiar with the taxing acts with delight, respect, and profit. Since the death of the lamented and loved Dr. Thomas Adams, no one else in the tax field has used a sharp-pointed pen so well to puncture what the author calls "the unintelligent mutterings of the ignorant and uninformed." If it should be necessary to delegate the work on the many future editions to others, the author's many friends would vote that he, and he alone, should always write the prefaces, and the longer the better.

FOREST D. SIEFKIN.

Chicago.

Du Mariage, des Régimes Matrimoniaux, des Successions Dans Les Cinq Parties du Monde. By E. Bourbousson. 1934. Paris: Librairie Marchal et Billard. Pp. V, 604.—According to its title the book under discussion purports to give the law of the world relating to Marriage, Matrimonial Property and Succession. Actually it includes the law of twenty European countries (omitting Ireland, Portugal, Bulgaria, Luxemburg and some of the other smaller states), the law of the United States and Quebec, the law of Argentina, Brazil, Chile, Peru and Venezuela, and the law of China and Japan. In connection with some countries it states the rules of the conflict of laws applicable to the above subjects, and, in a few instances, the law of inheritance taxation. The author does not indicate the object he had in mind in writing the book. It may be assumed, however, that it was to be primarily a practical guide for the use of officers of the civil status and for the members of the bench and bar in general. Such a guide might be of great utility, especially on the continent, in view of the fact that in their systems of the conflict of laws the national law of the parties has a wide sphere of application with reference to marriage, matrimonial property, and succession, and questions involving foreign law present themselves almost daily.

In order to be of real service a guide to foreign law must, of course, be reliable. It must have been prepared with the utmost care by competent hands and it must be kept up to date. A work of that description has been written on the subject of Marriage and Parent and Child by Dr. Alexander Bergmann, Councillor of the Prussian Ministry of Justice (Internationales Ehe- und Kindschafsrecht, Vols. 1-3, 1926-1928, with a supplement, published in 1934, bringing the legislation up to date) in which may be found the textual provisions of the different countries of the world relating to these subjects, translated into German, together with some introductory remarks of his own needful for an understanding of the subject. Another work, also of a most commendable character, relating to marriage and divorce, is a part of a more comprehensive undertaking by Leske and Löwenfeld, in collaboration with many foreign jurists, (Vol. 4 of Rechtsverfolgung im internationalen Verkehr, 1904, 2d. ed. 1932) giving the law of the world in treatise form. With neither of these the present work can bear comparison. In fact it is difficult to see to what practical use it can be put. If it had contained, following Bergmann's example, an accurate translation of the legislative provisions of the different countries on the subject of Marriage, Matrimonial Property and Succession, it might have been valuable, but, instead of doing this, the author paraphrases these provisions. This mode of procedure would be unobjectionable, as in the case of

the work by Leske and Löwenfeld, if the law of each country had been prepared by a specialist in such law. But when a single individual attempts to state in his own words the law of the entire world, the work cannot inspire the confidence in its reliability that is necessary for its use in legal practice. Such feeling of lack of confidence is naturally increased if, as in the instant case, for the most part no specific references are given to the legislative provisions upon which the statements are based.

The treatment itself is most inadequate. For example, the Danish law of marriage is disposed of in three sentences (page 161) and that of Norway in seven (page 430). In connection with the law of Scotland only a few remarks are made regarding matrimonial property and not a word is said about marriage and succession (page 164). The matrimonial property law of the United States is given in five sentences, in which attention is called to the fact that the legal regime in this country is that of separation of property. The fact that community property exists in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington is not even mentioned. However, a few of the code provisions, relating principally to the renunciation of the community, appear in connection with the Louisiana law of succession (page 265). No rigorous method for the inclusion or exclusion of materials appears to be followed in any part of the work.

General works on comparative law, even at their best, can render to the lawyer in active practice genuine assistance only in connection with the simplest questions of foreign law. In any other case he will need to know not only the formal rules contained in the code sections, but also their interpretation by the courts. Helpful service in this regard is being rendered in some countries by specially endowed Institutes of Comparative Law.

ERNEST G. LORENZEN.

New Haven.

Leading Articles in Current Legal Periodicals

New York University Law Quarterly Review, December (New York City)—The Social-Economic Purpose of Private Rights: Section 1 of the Soviet Civil Code, by Valerian E. Greaves; Constitutionality of Section 77B of the Bankruptcy Act, by John Gerdes; The Measure of Damages on Conversion of Securities, by Samuel R. Wachtell; The New York Garnishee Execution as a Practical Remedy, by Arthur L. Newman, II; Herbert E. Kaufman.

Michigan State Bar Journal, January (Ann Arbor, Mich.)—Michigan Annotations of the Restatement of Contracts; Are Unfair Methods of Competition Actionable at the Suit of a Competitor? by Grover C. Grismore; Cooperation Between the Interstate Commerce Commission and the State Commissions in Railroad Regulation, by Martin L. Lindahl.

University of Cincinnati Law Review, January (Cincinnati)—Liability of the Trust Estate for Obligations Created by the Trustee in Ohio, by Harry W. Vanneman; Is There Minority Control of Court Decisions in Ohio? by Edwin O. Stene; Chief Justice Waite and the Limitations on the Darmouth College Decision, by Bruce R. Trimble.

Oregon Law Review, December (Eugene, Oregon)—Proceedings of the Pacific Coast Institute of Law and Administration of Justice and the Oregon Bar Association.

Tennessee Law Review, February (Knoxville, Tenn.)—Delinquent Women—The Prostitutes, by William E. Cole; Tax Exemptions, by Harold Hughes; Federalization of Corporations, by Lowe Watkins; The Proposed Act to Incorporate the Bar of Tennessee, by Harley G. Fowler.

Minnesota Law Review, February (Minneapolis, Minn.)—Administrative Commissions and the Judicial Power, by Ray A. Brown; The Massachusetts Procedure Relative to the Sanity of Defendants in Criminal Cases (The Briggs Law), by Winifred Overholser.

St. Louis Law Review, December (St. Louis, Mo.)—State Regulation of Contracts with Public Utility Affiliates, by George W. Simpkins.

Illinois Law Review, February (Chicago)—The Illinois Business Corporation Act and Bankruptcy Legislation, by John S. Miller; Forfeitures Under Real Estate Contract in Illinois, by Harold C. Havighurst, James J. Lawrence; The Assessment of Railroads in Illinois, by Barnet Hodes.

University of Pennsylvania Law Review, February (Philadelphia, Pa.)—Restatement of the Law of Torts, by Arthur L. Goodhart; Constitutional Liberty of Contract: Does It Still Exist? by Thomas Raeburn White; Nonconsensual Subs Suretyship, Part Two, by Morton C. Campbell.

Notre Dame Lawyer, January (South Bend, Ind.)—"Indejendent" Jurisprudence, by Charles C. Miltner; Price-Fixing under N. I. R. A. Codes, by W. C. Dorsey; Are Small Compensatory Damages Merely Nominal? by Ralph S. Bauer; The Case of Lennox-Maxwell, by Sherman Steele; The Measure of Recovery Where the Plaintiff has Partially Performed a Contract and Complete Performance is Prevented by the Defendant's Breach, by Louis Jackson.

Virginia Law Review, February (University, Va.)—Government Proprietary Corporations, by John Thurston; Costs in Common Law Actions in the Federal Courts, by Philip M. Payne.

United States Law Review, January (New York City—The Securities Exchange Act of 1934 and the Commerce Clause, by Jacob Lippman.

Fordham Law Review, January (New York City)—Why Law School Reviews? A Symposium, by Frederick E. Crane. William D. Guthrie, Ignatius M. Wilkinson; Some Recent Developments in the Law Relating to Municipal Financing of Public Works, by E. H. Foley, Jr.; Creditors' Rights in Life Insurance, by Osmond K. Fraenkel; Principles or Facts? by Walter B. Kennedy.

American Journal of International Law, January (Washington, D. C.)—The Thirteenth Year of the Permanent Court of International Justice, by Manley O. Hudson; The Codification of International Law, by Philip Marshall Brown; Conditions of Withdrawal from the League of Nations, by Josephine J. Burns; Retroactive Effect of the Ratification of Treaties, by J. Mervyn Jones; Thomas Jefferson on the Law of Nations, by Charles M. Wiltse.

Law Notes, January (Northport, N. Y.)—Legal Aspects of Suicide, by Carl V. Venters; Progress in Proof of Handwriting, by Berto Rogers.

Kentucky Law Journal, January (Lexington, Ky.)—Are the Criminal Courts Doing their Duty? by Ferdinand Pecora; Cooperative Milk Marketing and Restraint of Trade, by John Hanna; Injunctive Relief Against Employees Using Confidential Information, by Joseph A. McClain, Jr.; Legal Problems Involved in Controlling Agricultural Production, by Fred A. Dewey; Liability of a Trustee: Balancing Gains Against Losses, by Benjamin Harris, Jr.; The American Law Institute's Restatement of the Law of Contracts Annotated with Kentucky Decisions (Continued), by Frank Murray.

Southern California Law Review, January (Los Angeles, Cal.)—Double Taxation, by Charles G. Haglund; The Delegation of Legislative Power to the Executive Under the Constitution of Mexico, by Sam G. Baggett.

Temple Law Quarterly, February (Philadelphia, Pa.)—Recent Decisions and Trends in Building Construction Law, by Edward H. Cushman; The Corporate Reorganization Amendment to the Bankruptcy Act, by L. Stauffer Oliver; The Restatement of the Law of Contracts by the American Law Institute, by Roland R. Foulke; Immunity from Compulsory Self-Incrimination in a Federal System of Government (Part Two), by J. A. C. Grant.

University of Chicago Law Review, February (Chicago)—The Contributory Negligence of Plaintiff's Wife or Child in an Action for Loss of Services, etc., by Charles O. Gregory; Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable? by E. Merrick Dodd, Jr.; The Problem of Granting Voting Rights to Bondholders, by John Everts Tracy; Comparative Law and Conflict of Laws in Germany, by Max Rheinstein; Advance Notice and Hearing Under the Agricultural Adjustment Act, by Forrest Revere Black; International Legal Effects of Dollar Depreciation, by Arthur Nussbaum; Monopolies and Monopolistic Practices, by Malcolm P. Sharp.

SCIENTIFIC AND PROCEDURAL ASPECTS OF THE HAUPTMANN TRIAL

By PAUL H. SANDERS
Member of the Texas Bar; Assistant to Director National Bar Program

CONSIDERING the wealth of material that the Hauptmann case offers to the students in both the natural and social sciences, it is difficult indeed to pick out any one or two points as being of especial interest to the lawyer. Millions of words have been written about the celebrated cause, and they will continue to be written. The experts in several fields will find the case a valuable guide for the court appearances that they will make in the future. The psychiatrist, or anyone occupied with queer quirks of human behavior, will find much to contemplate in the reams of testimony and in the public reactions to the show as it progressed. I use "show" advisedly—some commentators dubbed it "the greatest performance of the century."

However, in spite of the others who crossed the stage now and then, it was the lawyers who played the leading roles and who were in the spotlight when the curtain was rung down. Sharing it with them, however, was one who could not be denied his place. He was an "expert," but an expert such as the courts of law had never seen before. His field was wood. Defense attorneys asserted there was "no such animal" as an expert in this field. Yet it is unlikely that any testimony given in that crowded court room at Flemington was more tense with drama than was that of this expert in prosaic wood. If one can pick anything for discussion out of the manysided aspects of the trial that should strike lawyers as particularly significant, then it seems best to choose the use of expert testimony and the procedural aspects of the trial. This latter is more the lawyer's field. Can anyone deny that tremendous weight must be given to the fact that Judge Trenchard could, in his charge, talk to the jury in a way that few judges in this country are allowed to do? But this must be reserved until after a few words about use of expert testimony.

Arthur H. Koehler is a wood technologist of the United States Department of Agriculture. The study of wood has been his work for years, yet he had never been called upon to display his knowledge to the world. Then came the supposed kidnaping of the Lindbergh baby and the subsequent discovery of its death; and a ladder was brought prominently into the picture—a ladder with three sections. Mr. Koehler was called in and given the ladder which it was believed had been used by the kidnaper in taking the child from the nursery. The painstaking thoroughness with which the wood in that ladder was traced is amazing. Mr. Koehler's experience with the type of wood grown in various sections of the country told him that one of the uprights of the kidnaper's ladder was Carolina pine. Into the Carolinas he went and finally the mill was found which had prepared that board. An imperfection in the machinery of the mill had left its mark on the board, and it developed that lumber marked in that way had been shipped to a Bronx lumber yard. Microscopic examinations, scientific measurements, and patient, painstaking work were the accompaniments of this search. At the lumber yard science could go no further. This was many months before Hauptmann was arrested.

After this arrest the wood expert had new fields for his labors. There was lumber around the place, but there was also a missing board (or rather, part of a board) in the attic of the accused. Again scientific measurements, microscopic examinations, and enlarged photographs were used—and with telling effect. Their story was told on the stand by Arthur H. Koehler. His testimony put the parts of the kidnaper's ladder in Hauptmann's lumber room and in Hauptmann's attic. The jury believed him.

There were other experts, many of them very prominent, such as Osborn, Sr. But "handwriting" has had its day in court before, and at present more attention is focussed on the lusty debut of "wood." The defense called their "experts," but most of those called to deny that Hauptmann wrote the ransom notes mysteriously faded out of the picture. C. J. DeBisschop, the "practical lumber man" from Waterbury, Connecticut, brought saplings and pieces of board into court where Mr. Koehler had brought magnified photographs. He denied Mr. Koehler's premise that the wood in each tree was as individual as human finger-prints. The jury apparently did not believe him.

Aside from the proof that the case offered of the decided advance that has been made in the detection and pursuit of criminals and of the great advantage enjoyed by a centralized agency not handicapped by state lines in such pursuit, the procedural aspects of the case are worthy of comment. Especially is this true in light of the fact that improvement of criminal procedure is one of the cardinal points of the National Bar Program in which the American Bar Association is cooperating with the state and local bar associations all over the country.

The recommendations adopted by the American Bar Association in this field have been based in general on the Model Code of Criminal Procedure prepared by the American Law Institute. Particular attention has been called, however, to the provisions of the code allowing the impanelling of alternate jurors, and permitting a jury verdict by less than unanimous vote except in certain major felonies. In addition to the Model Code provisions, the American Bar Association has recommended that advance notice be given by the defense in case an alibi will be used, and that such notice shall set out the facts of the alibi and the attendant circumstances.

It should prove interesting to consider these recommendations of the American Bar Association against the background of New Jersey case. The requirement of advance notice of the alibi defense

became law in New Jersey in 1934 and it was available for use in the Hauptmann trial. Its use would have proved of great importance because of the double alibi involved. Hauptmann presented alibis for the night of the kidnaping and for the night of the payment of the ransom money. But it was a new law in New Jersey. The lawyers were not accustomed to it. They did not know of its effectiveness in other states, such as Ohio and Michigan. Furthermore, there was a slight possibility that it might be frowned upon by the courts. Attorney General Wilentz decided not to take that chance, consequently no advance notice was required. This important law will be used increasingly, however, in the next few years. It has proved its effectiveness where it has already been used, and more than one state legislature will add it to the statutes of its particular state during 1935.

The American Bar Association recommendation concerning the impanelling of extra or alternate jurors would seem fitted for just such a case as the one under consideration. This provision is embodied in Section 285 of the American Law institute Model Code of Criminal Procedure, which has the following preamble: "Whenever in the opinion of the court the trial is likely to be a protracted one . . ." Certainly this could never fit a trial more perfectly than it would have in the Hauptmann case. Yet New Jersey has no such law. Some of the jurors were sick during the trial. In the very last days there was one juror stricken with an illness that might easily have become serious enough to cause that juror to be removed. Then wat would the result have been? Thirty days of testimony to be repeated. All that tiresome formality to be re-enacted, countless thousands wasted. The need of an alternate juror or jurors in such a case is apparent. The Committee on Criminal Procedure of the New Jersey State Bar Association, headed by W. A. Wachenfeld of Newark, has recommended that the problem be met by allowing a less than unanimous jury verdict in cases where a juror dies or becomes disqualified. This offers another method of reaching the same result, the only difference being that the American Bar Association recommendation preserves the verdict of a twelve-person jury. Doubtless some legislation meeting the problem will be passed in New Jersey this year, as it certainly will in some of the other states of the Union where the provision is not already in effect.

The outstanding procedural aspect of the trial was the charge of Judge Trenchard and the freedom with which he indicated to the jury the validity of evidence, as well as the absence of certain evidence on which Attorney Reilly based some of his concluding remarks to the jury. Section 325 of the American Law Institute Code provides that the court may make such comment on the evidence as in its opinion is necessary for the proper determination of the cause. This is not something new, however. It is the old common law power of the judge and the American Bar Association is only recommending that it be restored. No one can doubt the value of a guiding hand by an experienced judge after weeks of testimony have been received. Is the value any less in shorter cases or those of less notoriety? Judge Trenchard told the jury that they were the sole judges of the evidence; they need not pay attention to his comments if they disagreed. His comments were in reality very guarded. They did not go to the lengths that one could easily imagine, considering the power that was his. It was mainly by inference that his points were conveyed. The defense attorney had said that the crime was the work of a gang. The judge took care of this by asking the question if there was any evidence that it was the work of a gang. He substantiated the important testimony of Dr. Condon by his query concerning any doubt as to the educator's credibility. An Associated Press dispatch quoted George W. Wickersham, President of the American Law Institute, on the day before the judge's charge as stating that the charge would be the deciding factor of the case because of the mass of conflicting testimony. The verdict has borne him out in this assertion.

Louisiana Board of Governors Takes Over Important Functions

[*From The Bar Examiner, February*]

Word comes from Louisiana that the Supreme Court of that State, early in the month of January of this year, modified its rules by substituting the Board of Governors of the newly Integrated Bar for the Supreme Court Examining Committee for admission to the bar.

The new rules further provided that the Board of Governors shall take over the duties of the Supreme Court Committee on professional ethics and grievances, including the disciplinary functions of that committee. Thus, the Board of Governors of the State Bar of Louisiana, which, in accordance with the act passed by the legislature, was appointed by the Governor and which in the future will be elected by the people, will have complete control of both the entrance to and the exit from the legal profession. For the first time in the history of this country, the function of determining who shall be admitted to the legal profession is turned over to a board appointed for other purposes as an incident to its other duties, and which in the future will be elected by the people. In this connection it should be recalled that any candidate for election to the Board of Governors, in order to be eligible, must file the names of the corporate clients which he has served in the last five years and the amount of fees which he has received from them.

The National Conference of Bar Examiners takes this occasion to thank the members of the board which has been superseded for their efforts in maintaining a high standard of competency among those candidates whom they recommended for admission to the bar.

The Devaluation of "Silk"

(*Bench and Bar, Toronto*)

The acquisition of a silk gown and the right to use the coveted letters " K.C." have long been regarded by the legal profession as the *sine qua non* of success. The wholesale appointment of King's Counsel in recent years has somewhat diminished this traditional high regard within the profession and if we may judge the feelings of the population at large by the comment of the lay press, we are inclined to believe that the public no longer looks upon a silk as one who deserves any particular notice.

A NEW FIELD FOR SERVICE—THE JUNIOR BAR*

By William A. Roberts
Member Washington, D. C., Bar; Secretary Junior Bar Conference

SIX MONTHS have now elapsed since the formation and approval of the Junior Bar Conference in the American Bar Association. The 200 persons who were present at Milwaukee have been joined by nearly 400 more throughout the country, and the organization of the Executive Council with one member in each of the Federal Judicial Circuits has been completed. Thirty-one states are now represented by State Chairmen, and many of these states have a partially completed quota of city and county chairmen.

So much for the increase in mere numbers. It is on the side of program and actual work accomplished that the greatest advances have been made. In August there were as many ideas of the significance of the Junior Bar Conference as there were delegates to the organization meeting. Some believed it should be merely an association of Junior Law Clubs, much on the order of the International Legal Fraternity. Others proposed a Junior Bar Association, separate in everything but name from the American Bar Association, and perhaps in a measure antagonistic to it. Through debate and argument there has crystalized a view of the Junior Bar Conference as an inherent part of the American Bar Association, composed of individual members who are in all respects identical in their standing with older members, but who in addition would cooperate in a Section designed to take advantage of the energy and the time of the younger bar members. It is organized as the active arm of the legal profession. This view has become definitely accepted and is now the firm basis of the program of action outlined at the meeting of the Executive Council of the Junior Bar Conference in Washington last week.

The tangible evidences of the success of the program may be found in meetings such as this where, with the cooperation and approval of the State Bar Association of Florida, the lawyers under 36 years of age from all parts of the state are gathered to consider establishment of a similar organization within the Florida State Bar Association. It may also be found in the approval of statesmen and jurists of the highest rank which has been expressed freely in support of the speaking program now under way. I might outline fully this particular feature of the Junior Bar Conference work.

We felt that little could be accomplished by duplicating the committees and sections of the American Bar Association within the Junior Bar ranks. This would tend to divide the control of specific tasks of accumulation of legal information and would separate the younger lawyers interested in such activities from the work of the central committees. Of course, any such effect is undesirable and contrary to our first principle, namely, that the Junior organization should remain an inherent part of the established professional organizations. It was, therefore, decided to sound out the younger members of the American Bar Association on their willingness to enter into a campaign of public speaking and writing, having for its purpose the education of the laymen in the ethics and practices of the legal profession, and the defense of the legal profession against unsupported and unfair charges of malfeasance and nonfeasance. The acceptance of this procedure was astonishingly favorable. From all parts of the country the letters have been arriving pledging full cooperation and enthusiastic support for the program as filling a real need in the several communities.

I can help you clarify the relationship of the Junior Conference of the American Bar Association with the proposed State Bar Associations when I say that the part which the former will play in this speaking program will be in the selection of appropriate topics and the transmission of mimeographed materials to the speakers wherever located. Their talks to the public will be made entirely on their own responsibility but will, we hope, be synchronized with the central program by the standard made of the material supplied.

Another phase of this work will be the transmission to State Bar Association officers of data as to progress and program in other jurisdictions so that they may in turn organize the Junior activities within their own associations and direct it most effectively on matters of national importance, while reserving to themselves prerogative of home rule in considering local questions.

It is my purpose to attempt to answer later specific questions as to methods of procedure in local organization, but I would like to outline at this time what I believe to be the answer to objections frequently urged in the early stages of consideration of Junior activities. The question is sometimes presented as to the possibility that the younger lawyer who participates actively in a *Junior* Bar organization may lose much business by reason of an inference of incompetency as a result of inexperience. It must be admitted that in very small communities the division on any arbitrary age basis whether it be 36 or 46 would be subject to the same difficulty. However, a practical acceptance of the facts requires the admission that the Junior members are for the most part less experienced than those who have been long at the bar, and under modern conditions a more effective method must be devised to overcome this recognized difficulty.

The British Inns of Court with their intimate social and professional contact between the leaders in the profession and the novices approximated the ideal. The early American practice of legal apprenticeship or clerkships also gave to the young lawyer the advantage of association with one who had met most of the problems of the profession and had discovered their solution, but the modern

*Address delivered at the organization meeting of the Junior Bar Conference of the Florida State Bar Association, at St. Augustine, Fla., Feb. 1, 1935.

law school system, turning out as it does thousands of young men technically trained but wholly lacking in practical experience of contact between client and lawyer, makes difficult the transmission of the traditions of the profession and those delicate overtones of professional ethics which, after all, are the supreme law in guiding a lawyer's activity. We cannot have the individual contact of youth and experience. We must substitute for it the mass contact of youth and experience. There is an ancient adage which specifies old men for counsel and young men for war. In application to our profession you may accept the guidance as to principles of the leaders of the bar and still see a widening breach between the legal profession and the layman. This gap must be filled by the direct contact of young lawyers who can carry the counsel of the profession directly to groups of laymen, while he still has time to devote to such efforts.

In performing this work there is a true opportunity for service. Most of the derisive comments so carelessly flung at the legal profession are the result of lack of information concerning its difficulties, and while some small measure of truth may exist in certain individual instances, we know that the bar is now, as throughout the history of the country, the bulwark of stability in government and the preserver of individual liberty. Let us take as our own the task of carrying this doctrine to the mass of people, resisting without fear those who conduct unwarranted campaigns against our profession. Mere denials would be ineffective. We must arm ourselves with the fundamental facts and refer to history which has been collected and preserved in the archives of the legal organizations, if we would see this job well done.

There is another phase of the lawyer's life which justifies a separation on an age basis. I refer to bar integration. This developing trend of organization brings the legal profession and the administrative arm of the government even more closely than in the past into contact with each other. Whereas, mere invective has failed in the battle against the unauthorized practice of law, a closely knit legalized bar organization can use the force of paid investigators and adequately financed prosecution. Everyone of you has experienced the loss of business to collection agencies and corporation practitioners who, without responsibility, assume the office of the attorney on a mass production basis. In some cities this process has developed to a point where practically no law practice remains for the novice in the field. Of course, major litigation is largely in the hands of the older lawyer, and while he may resent the activity of the corporation practitioners, he does not suffer the same direct financial loss. We do not have to establish new policies to combat these activities, the policies are clear. It should be the province of the younger lawyers through a local organized support and aided by state-wide and national professional backing to meet directly these serious intrusions into his economic field, and to devote a collective energy to carrying out the policies which will establish the arm of the law effectively as a barrier to their continuation.

The word *Junior* may have a minor disadvantage but it implies that fine relationship of father and son, which is significant of the purpose of our organization. No better word has yet been proposed. We feel that with the passage of time and public knowledge of the aims and activities of the Junior divisions of the Bar Associations, membership in a Junior Conference of the Bar will have a prestige rather superior even to membership in a general bar association. There will still remain your opportunity to participate fully in the unlimited activities of the general organization. You will merely have the additional opportunity to associate professionally and socially with men of approximately your own age and to offer your collective influence in an effort to secure for them the protection and advice to which in other days and under other systems of living they were entitled.

The officers and Council of the Junior Conference of the American Bar Association are not so presumptuous as to suggest the extent or nature of your organization in the sovereign state of Florida. We have no desire to dictate the form which your organization may take, but we do extend our most cordial congratulations on the progress so far effected and tender to you all the information and services of which we are capable toward the successful outcome of this great project.

Secretary's Letter, Junior Bar Conference

ON January 21st the Executive Council of the Junior Bar Conference met in Washington. It was the first meeting of the Council since the Milwaukee convention and the agenda was crowded with matters of interest to the younger lawyers. With the exception of the Vice-Chairman, LaVerne Guinn, who was engaged in a matter which could not be continued, all members of the Council were present.

Under the system of organization of the Junior Conference one member of the Executive Council is selected from each Federal judicial circuit and one from the District of Columbia. Each of these Council members reports for the state chairmen of the Junior activities, who in turn report for the city and county chairmen. Naturally this system permits of a very accurate survey of sentiment throughout the country.

One of the most important matters considered by the Council was the program for the Los Angeles convention. Numerous subjects were mentioned with the result that it became evident that a policy of activities must first be crystallized. The Council reached the conclusion that the almost unanimous opinion of the Junior members was in favor of the organization of their activities as an executing arm of the American Bar Association. In other words, it was decided that the first objective of the Junior Conference would be to carry to the public the American Bar Association program, using as a source of materials the numerous reports of the sections and committees of the American Bar Association rather than develop independent and duplicating research committees.

The Council examined the returns from a sur-

vey of the Junior membership as to the probable results of a nation-wide speaking campaign in support of these objectives and, finding almost unanimous approval, appointed a Speakers' Committee of the Council consisting of Mr. Curtis Shears of New York, Mr. Owen Cunningham of Iowa, and Mr. Henry Weihofen of Colorado. This Committee was directed to start immediately on its program and arrangements were made with the Department of Justice to secure materials which could be sent to the local speakers' committees for their use. Under their program a large number of simultaneous addresses on the same point will be made in different parts of the country to bar associations, citizens' groups and over the radio. Provision for flexibility in presentation will permit adaptation of the program to the particular locality.

The major projects undertaken by the Junior Bar Conference for the coming year are campaigns in support of bar integration and for improvement in criminal law procedure and enforcement. A determined effort to strengthen the hand of local associations in their fight against unauthorized practice of the law is assured. These subjects will constitute the major topic of consideration at the Los Angeles convention although opportunity is being afforded for the presentation of new matter.

Obviously a large part of the time of the Council was devoted to organization matters. The Membership Committee met separately to consider the furtherance of its plans for attracting even more rapidly the younger lawyers who are not now associated with the Junior Conference of the American Bar Association. Preliminary returns show a very marked increase in applications, particularly from those states where Junior Bar Conference has been most active. Another phase of this membership work is the support given by the Junior Conference officers to the establishment of Junior Bar Sections in the several states. The Committee on Affiliated Organizations was given specific instructions as to the course to be followed by that Committee. In substance, it was decided that the work of the Junior Bar Conference would be limited to supplying information to the State Bar Associations with the consent of the officers of the latter and to encouraging and supporting Junior Bar Sections similar in scope and objective to the Junior Bar Conference. While members of the Junior Bar Conference would participate in these organizations, their activities would be entirely as members of the state organization without interference of the national bar group. It was believed that this theory of affiliation will prevent conflict with the state organizations and will encourage Junior Sections adapted to local requirements.

Not the least important of the plans adopted was the creation of a Publicity Committee to stimulate and review articles for law journals and other periodicals in support of the Junior Bar program. A system of clearing articles presented through the offices of the Secretary and the Assistant to the President of the American Bar Association was devised so as to coordinate these efforts and to accumulate a fund of material suitable for publication in magazines of major circulation.

The Council was in session until after midnight on January 21st and finally recessed after consuming most of the following day. Its members were entertained in Washington by the Junior Bar Committee of the District of Columbia Bar Association and by the local members of the Council.

The Secretary was directed to present to the Executive Committee of the American Bar Association the preliminary report on accommodations for the journey to the July convention, with an eye to the necessity for economy in order to attract a large number of Junior Conference members to Los Angeles. Various suggestions for motor travel were obtained from the American Automobile Association and tentative plans for a special train from various points in the east to Chicago and from Chicago to Los Angeles, at absolute minimum rates, were devised. Council members were of the opinion that if these plans could be materialized it was likely that nearly 1,000 of the younger lawyers would be able to make the trip to the Pacific coast.

In addition the Executive Committee was requested to consider the possibility of the assignment of a Junior Bar member for purpose of liaison to each of the committees and sections of the American Bar Association. A definite proposal for the permanent organization of the Junior Conference as the Junior Section of the American Bar Association was developed.

After the adjournment of the Council meeting these matters were presented to the Executive Committee at its meeting in Jacksonville, Florida, and are now held under advisement by that body.

At the invitation of the Florida State Bar Association, the Secretary of the Junior Conference was requested to assist in the organization of a Junior Section in that state. He participated in meetings of the Bar Association of Florida at which the following amendment to the State Bar Association Constitution was adopted.

"Resolved, that the Constitution of the Florida State Bar Association be amended as follows:

"That the following Article be adopted as Article — and be entitled 'Junior Bar Section.'

"Section 1: There may be a Section of this Association to be known as The Junior Bar Section.

"Section 2: The Junior Bar Section is formed for the purpose of fostering discussion and interchange of ideas relative to the duties, responsibilities and problems of the younger members of the legal profession, aiding and promoting their advancement and encouraging their interest and participation in the activities of the Association. It may make recommendations to the Association and its proceedings may be published by authority of the Executive Council.

"Section 3: All members of the Association who have not yet reached the age of thirty-six years may be enrolled as members of the Junior Bar Section. The Section shall elect a President, a Secretary and an Executive Council of five members annually, and shall have power to adopt regulations subject to the constitution and by-laws of the Association."

The amendment is set forth in full because it is deemed useful to other states where similar activities are contemplated. The Junior Section of the Florida Bar was organized with Mr. Pickens Cole of Tampa as President and with Mr. Harold B. Wahl of Jacksonville as Secretary. Mr. Wahl is State Chairman of the Junior Bar Conference and is an associate of President Scott M. Loftin.

A number of other States which contemplate Junior activities have also extended invitations to attend their conventions to be held before July and there is every indication that within a year similar sections will be organized throughout the United States.

Those in attendance at the Council meeting in

Washington were as follows: Samuel S. Willis, Chairman, Detroit, Mich.; William A. Roberts, Secretary, Washington, D. C.; Robert P. Bingham, Manchester, N. H.; Curtis C. Shears, New York, N. Y.; Thomas N. Griggs, Pittsburgh, Pa.; Walter L. Brown, Huntington, W. Va.; Julian B. Humphrey, New Orleans, La.; Joseph D. Stecher, Toledo, Ohio; Donald B. Hatmaker, Chicago, Ill.; Owen Cunningham, Des Moines, Iowa; Grant B. Cooper, Los Angeles, Calif.; Henry Weihofen, Boulder, Colo.; Paul F. Hannah, Washington, D. C.

WILLIAM A. ROBERTS, Secretary.

California Pacific International Exposition

(*Continued from page* 163)

"Holy Family," a Gobelins tapestry, the work of Matisse and other moderns with particular accent on the American schools, chiefly dominated by the Southwestern painters, will be found in this show.

Pueblo-inspired Palace of Education

Travel and transportation, commerce and industry will be represented in the exhibition palaces along the Avenue of the Palaces as well as in the industrial section which will be the site of display buildings erected by leading national exhibitors.

The million dollar organ with its huge outdoor amphitheatre, the famous zoo, home of the only two mountain gorillas in captivity, caught by Mr. and Mrs. Martin Johnson in the uplands of the Belgian Congo, the Palace of Education, the Cafe of the World, the spectacular midway and the Palace of Natural Museum are but parts of America's Exposition—1935 which has been planned to depict the past, the present and the future in the development of the West.

Two schools of architecture have been embodied in the construction of the Exposition buildings. Those along the Avenue of Palaces have been built for permanency, as have most of the edifices, and are acknowledged to be some of the finest examples of Spanish Colonial and Spanish Renaissance in this country. With the rich history and tradition of the old Spanish days for a background these buildings express, perfectly, the artistic theme of the Exposition.

In addition to the structures of Spanish origin are the several piles deriving from Mayan and Pueblo design that typify the spirit of the Southwest. In harmonious contrast to the ornate Spanish palaces these buildings will achieve effect through concentration of mass and simplicity of line. Floral planting will be used in the Indian motifs in place of the elaborate ornamentation that features the Spanish decore.

Landscaping and gardening have formed an integral part of the building operations for America's Exposition—1935. Balboa Park, as is all of southern California, has been endowed by nature with a perfect climate for cultivation of flowers and shrubs of all sorts. The natural semi-tropical foliage makes a luxuriant setting for the buildings and to enhance this setting the Exposition is now creating two exact reproductions of famous Spanish gardens. One is the world renowned Casa del Rey Moro garden which is found in Ronda, Spain and is conceded to be one of the finest private gardens in Europe. The other is the Alcazar Garden, the lovely public garden in Seville.

Thus this world's fair on the Pacific Coast is rapidly nearing completion with its main objective already an accomplished thing . . . the merger of Art and Science, Commerce and Industry, in a setting of harmony and beauty that will place it apart from other ventures of a like nature. The Exposition will open May 29th and will run through the Spring, Summer and Fall.

Work Going Forward Towards Coordinated Bar

(*Continued from page* 160)

great advantage. There are still many points to be studied.

"Therefore, I should like to ask the associations represented here to study these and other phases of the problem of coordination and give us the opinion of their membership. It will take quite a good deal of study. We would like to have committees created by every interested association and to have an opportunity to confer with them. If we can get 25 or 30 associations to consider this matter during the next year, we can take their combined findings and draw off something which is common and agreeable to all. I would ask you, officially, and individually, in your organizations, to seize the opportunity which has arisen, for if this movement does not go forward it will lapse. If the lawyers of America do not wish to coordinate they can decline to do so, but now that the preparatory work has been done and funds are available, at least for a limited period, the time has come to decide and to act. Our object today is, first, to point that out to you as vigorously as possible, and, secondly, to ask you to give such study as you will and your

organization will, to these matters, and to furnish us with your conclusions. We will then do the best we can to build something permanent upon your efforts."

The Beginnings of a Coordination Plan

A move to make the General Council of the Association more representative was taken at the meeting of the State Bar of California last fall. A resolution which was passed there authorized the Board of Governors to designate its choice for General Council member from California and his alternate. This was done in the belief that the caucus of the members from that state attending the A. B. A. annual meeting would accept the person so designated as its nominee. At the recent meeting of the New York State Bar Association this was referred to as a forward step by the committee of that Association on Organization of the Bar and Cooperation Between State and Local Bar Associations. In its report, the committee stated that if this plan was generally adopted, "it would make the Council of the American Bar Association a more representative body." As to the course to be followed in New York, the report continued:

"At the last meeting of the Executive Committee of the New York State Bar Association attention was called to the desirability of having the New York member of the General Council of the American Bar Association recommended or nominated by the New York State Bar Association, and the matter was referred to its Committee to Consider the Revision of the Constitution and By-Laws, so that some legally constituted form of nomination might be worked out. However, the Executive Committee may consider it within its province to make a nomination of someone from the New York State Bar Association who is also a member of the American Bar Association. Such a nominee would be thoroughly representative of the State Association, and such recommendation would receive serious consideration from the members of the American Bar Association from New York State when they gather at the meeting of the American Bar Association in Los Angeles next July."

A special committee of the Minnesota Bar Association last year recommended several changes in the structure of the national organization as a preparation for coordination. These proposals were reported to the Conference of Bar Association Delegates at Milwaukee, and included recommendations that the General Council be given increased powers and that the state associations elect or participate in the election of the General Council members. Three different suggestions were made respecting this participation:

1. That the members should be elected by the state bar associations.

2. That the membership of the Council should be doubled, one member to be elected as at present, while the other should be elected by the state bar association.

3. That the membership in the Council should be increased and the state bar associations should elect members, the number to be determined on the basis of the number of members of the American Bar Association in the state.

It was also proposed that the chairman of the Conference of Bar Association Delegates be made ex-officio a member of the Executive Committee of the American Bar Association. Of course only members of the American Bar Association would be eligible for election to the General Council under the plan.

At the midwinter meeting of the Wisconsin Bar Association in Madison on February 8th, one session, presided over by Mr. Frank Boesel, was given to a discussion of a coordination plan and reports on the National Bar Program subjects.. A resolution was passed expressing the sense of the meeting as favoring the suggestions advanced by Mr. Carl Rix, an ex-president of the association, that General Council members should be elected by the state bar associations and a further resolution was passed:

"That the American Bar Association be requested to amend its by-laws by providing that the members of the General Council should be nominated by the state bar associations."

These separate voices from the Pacific coast, the Atlantic seaboard and the middle west indicate a demand for an official participation by the state associations in the work of the American Bar Association and a desire that the General Council shall be chosen on a representative basis. As Mr. Wickser has pointed out, the subject is not a new one, but it is now receiving renewed attention. Twelve years ago a proposal that the Council should be elected by state bar associations was made by a previous coordination committee and was recommended by the Executive Committee only to be defeated on the floor at Minneapolis. The matter has now again come to the front. Mr. John W. Davis has expressed himself forcefully in regard to it in this fashion:

"The point is this. Year by year and more and more the American Bar Association, by reason of its growth in membership if not otherwise, assumes to speak as the voice of a continental bar. Its claim to do so is mere usurpation unless it is so organized as to be fairly representative of every class and section of professional opinion. Can this be said to be its stature so long as the repository of supreme power and the organ of ultimate expression is merely an annual mass meeting; and a mass meeting, too, whose preponderant numbers are drawn in the very nature of things from the membership nearest in mileage to the point of assembly? Distances, we are often told by perfervid orators, have disappeared with the progress of invention. But they still play their part when men are leaving their homes and offices. A *viva voce* vote in such a gathering on important questions can only be treated as a fair expression on the somewhat violent assumption that lawyers and the opinions of lawyers are alike the country over.

"No one would be more reluctant than I to abandon the essentially democratic character of the American Bar Association. Nor do I see why any member in good standing should be denied the privilege of the floor at any meeting, annual or otherwise. I would preserve in any machinery that might be set up for the purpose the right of every member to be heard in the selection of those who are to represent him. But I think the Association would be strengthened on every side if the right of final decision, the power to pledge the opinion, the good name and the influence of the Association were confided to a body of representative delegates chosen from the bars of the several states. That, after all, is the American system in all matters governmental. It has right reason and established practice in its favor."[1]

An intelligent study and discussion of the problems of national organization will be helpful in reaching a solution which will be acceptable to the bar and which at the same time, will be a blueprint for fashioning an efficient instrument to improve the administration of justice.

Director of National Bar Program.
WILL SHAFROTH,

(1) Vol. XX., No. 1. American Bar Association Journal, p. 8, (January, 1934.)

Binder for Journal

The JOURNAL is prepared to furnish a neat and serviceable binder for current numbers to members for $1.50. The price is merely manufacturer's cost plus expense of packing, mailing, insurance, etc. The binder has back of art buckram, with the name "American Bar Association Journal" stamped on it in gilt letters. Please send check with order to JOURNAL office, 1140 N. Dearborn St., Chicago, Ill.

Chief Justice John Marshall, Transportation Expert

BY H. O. BISHOP*

THE people of today only know Chief Justice John Marshall as a famous jurist—the man who "primed" the Constitution of the United States. The fact that he was greatly interested in the improvement of a transportation system from the Atlantic Coast to the Ohio and Mississippi Valley's is practically unknown.

Would it surprise you to know that during the time he was serving as Chief Justice he devoted almost two months to making a thorough inspection of the route of the James River Company which had been promoted by George Washington and who was its president?

Almost a century and a quarter ago the General Assembly of Virginia named the Chief Justice chairman of a commission to make a general survey and inspection of the rivers of Virginia covering the territory from the James River to the Ohio River, which also included the Greenbrier, New and Kanawha Rivers—the early dream of George Washington and now the route of the Chesapeake and Ohio Lines.

This was no summer junket for the Chief Justice. It was down-right hard work with old mother earth for a mattress and the sky for covering. It meant mountain climbing and wading and swimming rivers and creeks. Carrying, poling, pushing and loading and unloading boats. Meals were supplied by catching fish and shooting game. Marshall was that kind of a man. He had been brought up right. Nothing soft or fussy about him. Not a bit puny or hothoused. So tough was the work that he tells of ten days being required to cover a distance of 48 miles high up in the Alleghanies.

The New River, which plunges through a deep gorge in the Alleghanies, creating one of the most beautiful scenes in this country, is thus gently described by the Chief Justice: "The New River having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water."

Now here's a surprise for you. Even in that long-gone day the dream of steam in transportation was in the mind of that great Chief Justice. Listen to him: "Your commissioners submit with diffidence: That boats impelled by steam may be employed successfully on New River. With the capacities of this powerful agent, they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of the New River, and to hazard any decided opinion on the comparison. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require."

What a remarkable prophecy that was! How pleased Marshall would be if he could again visit the New River and see dozens of giant steam locomotives hauling 150-car trains of coal, dug from the mountains on the banks of that stream, whizzing along on their way to manufacturing plants and homes throughout the land.

In that portion of his report giving reasons for the further development of George Washington's system of transportation, Marshall makes these interesting observations: "That intimate connection which generally attends free commercial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different countries, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable; but, in the vicissitude of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their presentation too valuable to be estimated in dollars and cents.

"The advantages which may result to Virginia from opening this communication with the western country, will be shared in common with her by the States of Kentucky and Ohio. Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

"The proposition, that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belong to every case, the situation of the western States suggests some which are peculiar to themselves, and which well deserve their consideration.

"The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic States. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will render this disparity between the commercial and agricultural capital still more sensible. It will tend still more to retard population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

"In times of profound peace, then, the States on the Ohio would make sacrifices of no inconsiderable magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph

*Mr. Bishop is a resident of Washington, D. C. and is the publicity representative of the Chesapeake and Ohio Railroad.

of Florida, which is surrounded by foreign territory; the Island of Cuba and the Coast of East Florida completely guard the passage from its mouth to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

"But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

"If the direct route through the Atlantic States would, for many purposes, be more eligible than that through the Gulph of Florida, which must often be connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

"But your commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the States of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line . . . could probably use this route more advantageously than any other. . . .

"Should the navigation of James River be rendered as safe and as easy as may be reasonably expected, and the Greenbriar and New River be improved, in such manner as the object will justify, your commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanawha, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

". . . The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states."

Current Events

(*Continued from page* 139)

has authority to pass this particular legislation."

He stated that the Supreme Court's objection to section 9(c) of title I of the Industrial Recovery Act "did not lie in the fact that the Congress had prohibited interstate shipments, but that it had sought to delegate to the President the power either to prohibit or not to prohibit such interstate shipments, according to his own judgment and discretion, without the Congress having laid down a particular set of facts upon which he could act or a particular standard which would guide him in that determination."

As Senator Connally stated, section 2 of the proposed Act, among other things, "absolutely prohibits the shipment in interstate or foreign commerce of oil produced in violation of state law or regulations." Section 3, after referring to a certain certificate, says that, "Whenever such certificates of clearance are required in any area or areas, no person shall engage in interstate or foreign commerce in petroleum or liquid petroleum products, derivatives, or blends from such area or areas without first obtaining such certificates of clearance in accordance with the applicable rules and regulations."

Previously the same section 3 had prescribed how rules and regulations might be made, it being about the same process as for the requiring and issuing of the certificates as to which it is provided: "The President or his duly designated agent or agency may require certificates of clearance for petroleum or liquid petroleum products, derivatives, and blends moving or intended to be moved in interstate or foreign commerce in areas where it may be found necessary or appropriate to effectuate the purposes of this act, and the President or his duly designated agent or agency may establish boards for any such area or areas to issue certificates of clearance."

The proponent of this repair measure quoted from section 9(c) where it says that "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn"—. He did not complete the sentence which continues: "from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of a State."

In the discussion of the newly enacted bill when it was under consideration by the Senate, it was explained by Senator Connally that "One of the chief evils we are seeking to correct is the absolute theft of oil." He had stated before that oil is a fugitive element, not stable, and that "the State in order to protect surface owners in their rights, has found it necessary to set up an elaborate system of drilling regulations." It was not stated how it was proposed to identify stolen oil, nor that States which have regulations as to shipping oil outside their borders restrict only such oil as has been stolen.

Senator William E. Borah raised the issue as to whether "the State and National Governments combined may prohibit the shipment in interstate commerce of a perfectly legitimate and desirable commodity simply because they have come to the conclusion that it is in the interest of public policy to do so . . . regardless of whether there is any crime connected with the transaction, and regardless of whether the food or the commodity is in any way deleterious or injurious. . . ."

Senator Carter Glass propounded the question as to whether, "no matter how absurd a State law might be, just because it is a State law affecting interstate commerce, the Congress would have the right to prohibit interstate commerce so far as that State is concerned "

Senator William H. King said: "In my opinion, the measure before us does

not meet the objections urged in the opinion of the Chief Justice to which I have referred. The wisdom of this proposed legislation certainly is subject to challenge, and its constitutionality may properly be called into question. I cannot bring myself to vote for this measure and shall, when the vote is taken, cast my vote against it. I regard the measure as unwarranted by any facts brought to my attention, and it is a further effort to extend the authority of the Federal Government to deal with matters of a purely domestic and State concern."

In support of the bill, Senator Connally read a letter from the chairman of the Petroleum Administration Board, as he said, "in order to indicate that the Interior Department which has jurisdiction of the oil enforcement, is supporting and in favor of this measure as far as it goes, but in justice to that administration I desire to say that it really favors a more comprehensive piece of legislation—that is, Federal control and regulation perhaps, in all its phases. This act, however, is intended simply to supply the gap in the law which the Supreme Court decision has made." Referring to the same situation, Senator Thomas P. Gore, who had collaborated in preparing the bill, said, "if Congress can meet that exigency by legislation at all the present measure meets that situation and takes care of that exigency."

The question remains whether there is any essential difference, so far as concerns the delegation of legislative power to the Executive, between saying, "The President is authorized to prohibit" and saying, "The President . . . may require certificates of clearance . . . where it may be found necessary to effectuate the purposes of this act.. . ." The Act as recently passed by the Senate makes no effort to declare a policy, establish a standard, lay down rules, to state the "prerequisites to the President's action," or to indicate the "particular circumstances or conditions" which shall "govern the exercise of the authority conferred" in finding where it is "necessary to effectuate the purpose of this act."

After repairing section 9(c) of the Industrial Recovery Act as the Senate proposes, there may still be the problem suggested by the Supreme Court in its opinion where it said, "Assuming for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce. . . ." The difficulties of this problem are indicated in a 3-page Extension of Remarks by Representative Samuel B. Pettengill, entitled "Hot Oil—Can Congress Prohibit Interstate Commerce in Petroleum Produced in Excess of State Allowables?" 79 Congressional Record 695 (Jan. 18, 1935).

On Feb. 18 the House passed its oil control bill. It would authorize the President to lift the ban on "hot oil" produced in excess of State limitations when he decided that the demand was greater than the supply. The measure now goes to conference.

Legislation Proposed

To provide that transferors for collection of negotiable instruments shall be preferred creditors of national banks in certain cases. H. R. 2882, to Committee on Banking and Currency.

To provide for citizenship to persons born in the United States, who have not acquired any other nationality by personal affirmative act, but who heretofore lost their United States citizenship through the naturalization of a parent under the laws of a foreign country. H. R. 3023, to Committee on Immigration and Naturalization."

To limit the car length of trains which may be operated upon railroads by common carriers engaged in interstate and foreign commerce. H. R. 8259, to Committee on Interstate and Foreign Commerce.

To terminate the authority of the President to enter into reciprocal trade agreements. H. R. 3422, to Committee on Ways and Means.

To alleviate the hazards of old age, unemployment, illness, and dependency; to establish a Social Insurance Board in the Department of Labor, and to raise revenue. H. R. 4120, also H. R. 4142, to Committee on Ways and Means. To similar effect is S. 1130, to Committee on Finance.

To create an executive department of the Government to be known as the "Department of Peace." S. 1442, to Committee on the Judiciary.

Authorizing and directing the Federal Communications Commission to investigate and report on the American Telephone & Telegraph Co. and on all other companies engaged directly or indirectly in telephone communication in interstate commerce, including all companies related to any of these companies through a holding company structure, or otherwise. S. J. Res. 46, to Committee on Interstate Commerce.

To create an Indian Claims Court for the immediate setttlement of Indian tribal and band claims, defining the powers and functions thereof, S. 1465, to Committee on Indian Affairs.

Permitting single signature in patent applications and validating joint patent for sole invention. H. R. 4985, and another—to limit the life of a patent to a term commencing with the date of the application. H. R. 4986, to Committee on Patents.

To authorize the several States to negotiate compacts or agreements to promote greater uniformity in the laws of such States affecting labor and industries. H. J. Res. 146, to Committee on the Judiciary.

To provide for the custody of Federal proclamations, orders, regulations, notices, and other documents, and for the prompt and uniform printing and distribution thereof. H. R. 5154, to Committee on Judiciary.

To stabilize and standardize money and labor prices by the establishment of a labor-hour monetary system, to guarantee work to all at all times, to give normal prosperity, prevent depressions, and for other purposes. H. R. 5228, to Committee on Ways and Means.

To repeal certain provisions relating to publicity of income-tax returns. S. 1643, to Committee on Finance.

Counsel in "Gold Clause" Cases

In Nos. 270, 471, 472, Mr. Emanuel Redfield argued the case for petitioner Norman, Attorney General Homer S. Cummings for the United States, Mr. Stanley S. Reed for petitioner the Reconstruction Finance Corporation, Mr. Edward J. White for petitioners Trustees of Missouri Pacific Railroad Co., Mr. Frederick H. Wood for respondent Baltimore and Ohio R. R. Co., and Messrs. James H. McIntosh and Edward W. Bourne for respondents.

In No. 532, the Perry case, Mr. John M. Perry argued the case for the petitioner and Attorney General Homer S. Cummings and Assistant Solicitor General Angus D. MacLean for the United States.

In No. 531, the Nortz case, Messrs. Otto C. Somerich and Raymond T. Heilpern argued the case for Nortz and Assistant Solicitor General MacLean for the United States.

Deaths of Members Reported to Headquarters

Cuthbert W. Pound, former Chief Judge of the New York Court of Appeals, died on February 3 at Ithaca, N. Y. He was stricken with a cerebral hemorrhage while attending a banquet held in his honor. Judge Pound served nearly 29 of his forty-nine years in the legal profession on the Bench in New York State. He had served on the Court of Appeals for 19 years when he was forced to retire because of a statutory age limit.

After a career as a teacher, attorney, and legislator, Judge Pound was appointed justice of the Supreme Court in 1906 to fill a vacancy. Endorsed by both parties, he was thereafter elected

to a full term of 14 years. Governor Charles Whitman appointed him Associate Judge of the Court of Appeals on August 20, 1915, to succeed Judge Nathan L. Miller, and in 1916, he was elected to the court as a candidate on the Republican and Progressive tickets. When Justice Cardozo was appointed to the United States Supreme Court in 1932, Cuthbert Pound became Chief Judge of the Court of Appeals. Judge Pound had planned to re-enter private practice after his retirement from that court.

He was born in Lockport June 20, 1864, and was graduated from the Lockport Union School in 1883. He entered Cornell in the following year and was graduated in 1887 with a B. A. degree. In June of that year he was admitted to the New York bar. He practiced law for a few years, and then was elected State Senator for one term. For nine years following he taught law at Cornell University. During part of this time—1900 to 1905—he served as a member (and later President) of the State Civil Service Commission as a Theodore Roosevelt appointee. In 1905 he resigned both positions to become counsel to Governor Frank Higgins.

John Barton Payne, Chairman of the American Red Cross since 1921, died in Washington on January 24. Mr. Payne had distinguished himself by a career of public service equalled by few men in American history. Nineteen foreign countries decorated him for his humanitarian work.

He was born on a farm in Fruntytown, W. Va., on January 26, 1855. His early years were spent in severe hardships, and he obtained his education largely by his own efforts and the tutoring of his older sister Eugenia. He studied law and was admitted to the bar in 1876. Six years later he came to Chicago to enter the practice. In 1889 he was President of the Chicago Law Institute and was Judge of the Superior Court of Cook County in 1895.

President Wilson called him to Washington to become a member of the Board of Appeals for the Treasury. He thus began a public career in which he was to serve under five Presidents. During the war he was General Counsel for the United States Shipping Board Emergency Fleet Corporation and General Counsel for the United States Railroad Administration. He was named Chairman of the United States Shipping Board in 1919 and was appointed Secretary of the Interior in 1920. He was named Director General of Railroads in the same year. Judge Payne remained in active charge of Red Cross operations until his death.

Robert Finley Dunlap, Hinton, W. Va. October 28.

LETTERS OF INTEREST TO THE PROFESSION

Committee's Statement on Proposed Child Labor Amendment

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

I read with much interest and gratification the statement by the Special Committee of the Association appointed to oppose the so-called "Child Labor Amendment." The statement is informative and exhaustive, and the arguments therein presented against the ratification of the proposed amendment are conclusive.

Certainly to anyone familiar with our system of government, the proposed amendment to the Federal Constitution, if ratified by the several States, would be the greatest step toward centralization of power in the Federal Government ever attempted in the country. It is the most undemocratic proposal yet advanced for the consideration of our citizens.

It would constitute not only an unwarranted invasion of a field reserved to the several states under our system of government, but the disturbance of the family relation, and the effect which would be worked upon the fathers and mothers and children of this country from legislation by Congress to carry out the purposes of the Amendment should give us pause.

It is elementary that the parent has the right to the care, custody and services of his minor child; his correlative duty is to support, protect and nurture in sickness and in health and to educate the child during his minority. Likewise, the minor child has the right to support, education and nurture from his parent and he owes his parent the correlative duty of obedience, protection and maintenance until he attains his majority. These rights and duties of parents and minor children have been recognized and enforced from time immemorial both by the common and by the civil law. Ratification of this amendment by the States would divest the parent and the child of these natural inherent rights, relieve them of these legal obligations, and vest the same in the Federal Government! Legislation by the Congress to enforce this proposed amendment to be effective must prescribe a penalty for its violation. We would thus have the monstrous spectacle of an Act of Congress making a crime of the exercise by the parent and child of rights and duties, respectively, which have come down to us through the centuries; rights and duties which are enjoined upon us both by the Divine and by the human law.

I trust that this admirable statement of the Committee may be placed in the hands of every member of the several State Legislatures, especially those now in session; indeed, I wish it were possible that a copy could be placed in the hands of every citizen of this republic, as I am confident that the people generally are ignorant of the scope of this proposed amendment; indeed, I doubt if ninety per cent of the people even know that it is pending; and I am satisfied if the people generally were informed about it, its purpose and effect, that there would be such a protest that no Legislature would ratify it.

R. E. L. SANER

Dallas, Tex., Jan. 29.

Recollections of the Tichborne Case by a Student in Lincoln's Inn

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

I was interested in reading the paper on the story of the Tichborne Case in the February issue of the JOURNAL.

I believe I am the only lawyer in the United States who can verify the narrative of Samuel H. Jaffee on the story of the Tichborne case, from actual memory of the events.

In the winter and spring of 1873 when the principal drama of the civil and criminal litigation was in action I was a student in the Chambers of an eminent Equity Junior in Lincoln's Inn. The window of the little room which I occupied looked out on Chancery Lane; and for several months, except on Sundays and sometimes on Saturdays, I used to see Dr. Kenealy, the counsel for the plaintiff in the civil case and the defendant in the criminal case, pass by my window every morning, followed by a cheering mob of what we then termed the lower class of the London population. The Doctor was always proceeding up Chancery Lane and toward Fleet Street. The cheering mob is very briefly, but quite correctly, re-

ferred to by Mr. Jaffee and the cause of its enthusiasm indicated.

In the litigation the plaintiff in the civil action and the defendant in the criminal action was a Protestant. If my memory serves me rightly, he professed to be a member of the Church of England. The member of the Tichborne family who held possession of the estate was a Catholic. The Tichborne family was one of the few families owning large landed estates in England who adhered to the old Church when England became Protestant during the sixteenth century.

We used to call the crowd that followed Dr. Kenealy "the mob." The mob of London, so-called, is strongly Protestant and anti-Catholic. Much more so than in the big American cities for reasons which are sufficiently obvious. Hence, their cheering for Dr. Kenealy and the claimant.

In the other leading events which Mr. Jaffee notices in his narrative my memory substantially bears him out. There is one episode which impressed itself very much on me at the time and which he does not notice at all. Still, there is nothing in the narrative which is inconsistent with or which necessarily excludes the happening of the incident which I refer to.

My recollection of this incident is that either in the civil case which was an action of ejectment on the title, or in the criminal case which followed, the plaintiff or the defendant, as the case may be, was financing his very expensive litigation by the sale of bonds secured by mortgage on the Tichborne estates. These bonds would be worth their face value if he succeeded and would be worth nothing if he failed. My recollection is that these bonds were selling at about ten shillings on the pound sterling, or fifty per cent of their face value, on the morning of the day when Sir Henry Hawkins got up to cross-examine. He cross-examined for several days and when he sat down it would have been difficult to get a shilling on the pound for these bonds. I have a tolerably clear recollection that we law students used to talk of this cross-examination as one of the most remarkable performances in that line ever staged by a great trial lawyer in England. I can hardly persuade myself to believe that this reminiscence of mine can be only a dream.

In the time I have been speaking, the New Law Courts, in which all of the principal divisions of the high court now meet, were not in existence. The equity courts were all in and around Lincoln's Inn, and the law courts, as we called them, opened off Westminster Hall. And the criminal cases were then all tried at the Old Bailey.

I suppose my recollection of Dr. Kenealy going up Chancery Lane towards Fleet Street must have reference to the criminal trial at the Old Bailey. I can hardly see how it could have reference to the civil trial which presumably took place in the Court of Queen's Bench off Westminster Hall. It was "Queen's Bench" then; it is "King's Bench" division now.

WILLIAM DILLON

Castle Rock, Col., Feb. 4.

Objectives of Constructive Plans for Limitation of the Bar

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

In the January issue of the JOURNAL under the heading "A Proposal for a Limited Bar," Mr. Sidney Teiser of the Oregon Bar proposed a remedy for the present over-crowded condition of the profession. Under Mr. Teiser's plan the lawyers' guild would be granted a state monopoly for an indefinite number of years. The legislature of each state would establish a quota for lawyers based on a desirable ratio to population. So long as the number of practicing lawyers exceeded this quota, the gates of admission would be barred to new applicants and would remain barred until the number of lawyers declined below the quota point. When this happened, only the limited number required in any year to fill out the quota previously set would be admitted.

How long a period would need to elapse before any new entrants would be admitted under the plan is a question which Mr. Teiser does not raise or answer. But whatever the initial period of entire exclusion, whether five, ten, or more years, the monopoly granted to the present members of the Bar would be absolute and thereafter the infiltration of new members would be very slight indeed compared to admissions at present.

And what of the plight of even the approved law schools of the country during the "famine period" of several years when no students at all would register, not to mention the lean years later on when only a comparatively few students could be expected to register? Would not the collapse of a large number of good schools be inevitable? Mr. Teiser ignores the huge investment in buildings and libraries as well as the inevitable shrinking of the teaching personnel, when he assumes that the quality of enrollment will compensate for the loss in quantity.

It is probably true that under any scheme of limitation the law schools are bound to suffer from decreasing enrollment. So, perhaps, even the drastic economic sacrifice exacted under Mr. Teiser's plan might be justified *if* his proposal were in the public interest and *if* it were the best way to safeguard that interest. This could only be the case if the Bar as at present constituted left little room for improvement. But even Mr. Teiser has no illusions on this score, as his own indictment of incompetence within the profession shows.

We should face the fact that a very large number of lawyers now practicing were poorly trained for the profession according to present standards at the time they were admitted and have not made good their deficiencies through specialization in practice or through further study. The profession, in other words, is weighted down with lawyers who have not kept step with the times. Some leaven is injected each year through the admission of at least a certain proportion of well-trained students. Teaching methods in good law schools have developed in keeping with the changing times so that today, as Professor Green of Northwestern Law School pointed out in the February, 1934, issue of the JOURNAL, the better law schools constantly "take notice of changes in the problems with which lawyers deal, of changes in types and methods of litigation, of the great emphasis put upon administration and administrative problems within recent years, and the consequent change in concepts, formulas, rules and other technics of governmental agencies, and particularly of lawyers."

No plan for Bar limitation like Mr. Teiser's, which puts a premium on stagnation and deterioration of the profession by excluding well-trained applicants, should be considered seriously. In limiting the Bar, the objectives should be (1) to continue to admit well-trained applicants, so sorely needed, (2) to exclude poorly-trained applicants, and (3) to weed out incompetent lawyers already admitted to practice. It is time that some constructive thought be directed to this last much-needed reform.

OLIVE H. RABE

Boulder, Colorado, January 26, 1935

Federal Bar Association Favors Proposed Child Labor Amendment

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

Please be advised that at a meeting of the Federal Bar Association of New York, New Jersey and Connecticut, held on January 14th, 1935, a resolution was unanimously adopted favoring the Child Labor Amendment to the United States' Constitution, and recommending that the same be adopted and ratified by the Legislatures of the several states.

JAMES AMADEI, Secretary.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

Florida

Florida State Bar Association Approves Bill Raising Educational Requirements for Admission to Bar—Bill Provides for Probationary Period of Three Years—Junior Bar Section Organized

The Florida State Bar Association met in St. Augustine on February 1st and 2nd at the old Ponce de Leon Hotel, still one of the most distinctive and elegant landmarks on the east coast of Florida, being regarded as the finest hotel in the world when it was built in 1885.

The Convention was preceded on January 31st by a meeting of the Conference of Delegates, which considered the reports of committees working on proposed laws to be presented at the forthcoming session of the Legislature. The reports handled by the Conference of Delegates, which is a delegated body from local bar associations, were passed on to the State Association with their own recommendations thereon.

It was felt by many who have attended meetings of the Florida State Bar Association since its organization in 1906, that this was the most representative meeting of the bar ever held in the State of Florida. Every person attending seemed interested in the constructive program under consideration. Out of the Association came definite recommendations approving a bill to be presented to the next Legislature raising the requirements for legal education and admission to the Bar of Florida. The bill provides that the applicant shall have an academic education not less than a graduate of an accredited high school, and that he shall complete a course in a law school for a period of not less than three years, or have four years' study in a law office after having previously registered with the State Board of Law Examiners. It also provides that all graduates of law schools and those taking the examination shall have a probationary period of three years.

A bill was also recommended to the Legislature covering some amendments and corrections in the Probate Act enacted by the 1933 Legislature of Florida, which completely rewrote the Probate laws of the state.

The Committee on the Revision of the Judiciary Article of the Constitution made its report in three sections, dealing with the various County Courts, Circuit Courts and the Supreme Court. It was decided to immediately ask the Legislature to adopt the committee's recommendations in reference to the County Courts and leave with the Executive Council the option of presenting the recommendations in reference to the latter two groups.

WILLIAM H. ROGERS
President, Florida State Bar Association

American Bar Association Officers Guests at Meeting

The Association had as its guests the President of the American Bar Association, members of its Executive Committee and members of the Executive Committee of the Commissioners on Uniform State Laws. The Convention was addressed by Scott M. Loftin, President of the American Bar Association, Honorable Daniel E. Roper, Secretary of the Department of Commerce, and Frank J. Hogan of the Washington Bar.

A section of the Association was organized to be known as the Junior Bar Section.

Wm. H. Rogers of Jacksonville was elected president and Ed R. Bentley of Lakeland was re-elected secretary-treasurer.

Mr. Rogers, the newly elected president, senior member of the firm of Rogers & Towers of Jacksonville, was born in New Haven, Connecticut, on October 5, 1884; graduated from Dickinson College with a Ph.B. degree in 1905 and an A.M. degree in 1906, and from the New York Law School with an LL.B. in 1909. He was admitted to the bar in New York City in 1909 and in the Panama Canal Zone, in 1910 and in Florida in 1912.

Mr. Rogers has been active in civic work, having been in charge of the NRA campaign in Jacksonville and Duval County in the summer of 1933. He is a member of the Seminole Club, Florida Yacht Club, Timuquana Country Club, Florida Country Club, Phi Kappa Sigma and Phi Beta Kappa fraternities, Masonic order, Shrine and the Jacksonville Civitan Club. For many years Mr. Rogers has been active in his professional associations, being a member of the following bar associations: Jacksonville, Florida, and American. Besides the monumental work done by Mr. Rogers and his committee on the Probate Act, he has served on the Executive Committee of the Florida State Bar Association for the past two years.

Mr. Rogers has never held a political office, but has applied himself closely to his profession and business enterprises with which he has been connected. He is director in a large number of corporations, among which are the Florida National Bank of Jacksonville, First Federal Savings & Loan Association of Jacksonville, Glen Saint Mary Nurseries Company, Gainesville Gas Company, being vice-president of the latter, and the Florida Title & Guaranty Company of Jacksonville, of which he is president.

Following his discharge from the army, he married Miss Otelia Medlin of Jacksonville.

ED R. BENTLEY,
Secretary.

Maine

Biennial Meeting of Maine State Bar Association Appoints Committee to Investigate Requirements for Admission, with Power to Propose Legislation on That Subject

The regular biennial meeting of the Maine State Bar Association was held in Augusta on Wednesday, January 9, 1935.

The forenoon session, held in the Judiciary room at the State House, was devoted entirely to the routine business of hearing reports of the Secretary and Treasurer and other officers, and to the appointment of general committees.

The afternoon session was held in the Senate Chamber at the State House. At this session the retiring president, Edward F. Merrill of Skowhegan, de-

livered an address upon the subject of Qualifications for admission to the Practice of Law. This was followed by a most interesting address by Chief Justice Pattangall of the Maine Supreme Court upon the Constitution of the United States.

The Committee on Resolutions then presented its report and resolutions upon the deaths of thirty-one members of the Association who have passed away during the last two years.

On the report of the Committee on

DANA S. WILLIAMS
President, Maine State Bar Association

Membership thirty-three new members were admitted, making the net membership in the Association at this time 445.

Officers for the next two years were then elected as follows: President, Dana S. Williams of Lewiston; Vice Presidents—Carroll N. Perkins of Waterville, Harold N. Murchie of Calais, and Louis C. Stearns of Bangor; Executive Committee—Dana S. Williams, Pres. Ex-officio; Walter L. Gray, South Paris; Charles E. Gurney, Portland; James B. Perkins, Boothbay Harbor; Currier C. Holman, Farmington.

A committee on membership was chosen consisting of one member from each county. A committee on Legislation was also appointed.

A committee consisting of Edward F. Merrill of Skowhegan, Carroll N. Perkins of Waterville, Frank H. Haskell of Portland, Herbert E. Locke of Augusta, and Franz U. Burkett of Portland, was appointed to investigate the question of requirements and qualifications for admission to the Bar of Maine with power to initiate legislation along these lines.

An interesting report of the Committee on Illegal practice of Law was given by Judge Neal O. Donahue of Auburn, Chairman, and this committee was authorized to continue its investigation with a view to later action.

A banquet at the Augusta House in the evening brought the day's proceedings to a fitting climax.

One hundred and fifteen members and guests were seated at the tables. Retiring President Merrill acted as Toastmaster and responses were given by His Excellency, Governor Louis J. Brann, Chief Justice William R. Pattangall, Justice Hugh D. McLellan of the United States District Court in Boston, Mass., Justice Guy H. Sturgis of the Maine Supreme Court, Justice Harry Manser of the Superior Court and Frank Fellows Esq., of Bangor, Maine.

RALPH W. LEIGHTON,
Secretary

Montana

Montana Bar Association Approves Legislation for Non-Partisan Election of Judges—Measure Now Before Legislature — Unauthorized Practice Committee Appointed

The annual convention of the Montana Bar Association was called to order by President Rudolph Nelstead, of Miles City, Montana, at the hour of 10 o'clock A. M., in the Palm Room of the Rainbow Hotel, Great Falls, Montana, on August 3, 1934. The convention lasted through August 3 and 4, 1934.

Arthur Jardine, Esq., a member of the Bar at Great Falls, Montana, delivered the address of welcome on behalf of the Cascade County Bar. Judge Goddard, of Billings, responded on behalf of the Montana Bar Association. Mr. Nelstead then delivered his address and report to the association. Mr. Nelstead's address was exceedingly scholarly and contained worth while observations and recommendations for the bar. Among other things he advocated the non-partisan election of judges in Montana, and the bills advocated by the Crime Commission.

Mr. Francis Silver, attorney for the State Railroad Commission, addressed the convention on "Current Problems of Public Utilities Regulation." Mr. Silver's address was scholarly and interesting, and contained citations of great value to the bar. Judge H. Leonard DeKalb, of Lewistown, addressed the convention on "Jural Relations." This address was well prepared, and was of great value to the members present. Hon. Raymond T. Nagle, Attorney General of the State of Montana, addressed the convention on "What Price Crime?" This address pointed out the general crime situation, and the Attorney General made numerous recommendations in order to curb the evil.

A general discussion followed Mr. Nagle's address, and it was manifestly shown by the members that they felt something should be done in regard to remedying the crime situation. Tom Davis, Esq., of Butte, Montana, addressed the convention on "Observations on Crime and the Criminal Law." This address was very interesting and called to the attention of the members the defects in criminal law procedure. C. A. Spaulding, Esq., of Helena, addressed the convention on "Courts and Lawyers." Mr. Spaulding discussed the relation of the courts and lawyers, and pointed out certain defects in their relationship, and recommended to the convention certain measures which would make the relationship more cordial. Mr. Spaulding's address was well prepared, and he had annotations for practically every statement he made. H. L. Maury, Esq., of Butte, addressed the convention on "Salaries of Justices of Supreme Court Should Be Increased." This address created great interest among the members, and a general discussion followed, which undoubtedly was of great benefit to this bar. Mr. Maury was well qualified to speak on the subject stated because of his frequent appearance before that tribunal and his consequent acquaintance with its special problems.

World Court Resolution Deferred

Several resolutions were brought before the convention and action on the crime bills was deferred for another year. This was true also in regard to the resolution favoring the World Court. The convention favored the non-partisan election of judges, and as a result, officers of the association as well as a committee of the association, have drawn a bill for the non-partisan election of judges in Montana, which bill is now before the legislature of this State. The convention took up the matter of the unauthorized practice of law, and authorized the president to appoint a committee of three to investigate the same in the State of Montana, and report to next year's convention.

Dean C. W. Leaphart, Dean of the Law School of the University of Montana, was unanimously elected President of the association. John W. Bonner, of Helena, was re-elected Secretary and Treasurer. Since we have fifteen judicial districts in this State, a vice-president was elected from each, and the following are names of the vice-presidents

C. W. LEAPHART
President, Montana Bar Association

as well as the district which they represent: First Vice-President, Chad A. Spaulding; Second, Al G. Shone; Third, Thomas C. Mallee; Fourth, L. L. Bulen; Fifth, T. E. Gilbert; Sixth, Walter S. Hartman; Seventh, T. C. Busha; Ninth, H. H. Hullinger; Tenth, H. Leonard DeKalb; Eleventh, Hans Walchli; Twelfth, O. C. Hauge; Thirteenth, Robert N. Jones; Fourteenth, T. D. Glenn; Fifteenth, Ernest L. Walton.

It was shown at the convention by the report of the Secretary-Treasurer that interest in the association is continually growing, and the membership for 1934 was much greater than that of preceding years. The convention was duly closed by a banquet at the Hotel Rainbow in Great Falls. At this banquet John L. Slattery, Esq., of the Great Falls Bar, acted as toastmaster.

The convention was one of the finest that this association has had in years. Credit for the convention, and the arrangements for it, is due the members of the Cascade Bar, of which Arthur Jardine, Esq., is President.

JOHN W. BONNER,
Secretary

Helena, Jan. 22, 1935.

New York

New Deal Attacked and Defended at Recent Meeting of New York State Bar Association — Hon. Donald Richberg Delivers Annual Address — Adherence to World Court Approved—Child Labor Amendment, etc.

The Fifty-eighth Annual Meeting of the New York State Bar Association, held in New York City on Jan. 24-26, was enlivened by a discussion of important aspects of the New Deal. Hon. Donald Richberg, Executive Director of the National Emergency Council, delivered the annual address, in which he defended the constitutionality of the government's program of economic recovery and reconstruction. He had no doubt as to the plenitude of governmental power to deal with the situation. He said:

That Comma and the General Welfare

"What is the value of fine-spun arguments over the power of the Federal Government to provide for the common defense and general welfare, as written into Section 8? It appears to be a fact that a semi-colon was printed in that sentence when it was adopted and changed by the mistake of a copyist to a comma in the engrossed Constitution. For over a hundred years legalists have sought to strangle the Federal Government with that comma; but in this time of recurring crises the Supreme Court blows away the fog with a whiff of obvious logic. It should be now evident that, in its expressly given power to regulate interstate commerce, the United States possesses all necessary power to promote the general welfare which is dependent upon a wise regulation of interstate commerce.

"In all those spheres of authority wherein the States are incompetent to act effectively, the Federal Government has been endowed with all the powers necessary to provide for, to protect and to promote the general welfare."

Mr. Richberg's address concluded by emphasizing the lawyer's responsibility in the present state of affairs. "A program of economic recovery and reconstruction must be carried through," he said, "to bring about a permanent improvement in the economic welfare of the American people. The issue of its success or failure does not depend upon a few people but upon many; and it depends considerably upon the great body of the lawyers of America, upon whom rests a heavy responsibility for the protection and perpetuation of our institutions of self-government."

Outstanding among the critics of certain aspects of the New Deal were Hon. Thomas D. Thacher, who stressed the invasion of the judicial power by administrative agencies and declared that independent judicial tribunals should be established for the exercise of judicial and quasi-judicial powers, and Mr. Gilbert H. Montagne, chairman of the Association's Committee on the National Industrial Recovery Act, who pointed to the impossible multiplicity of Codes, prohibited betweeen 4,500 and

JOHN GODFREY SAXE
President New York State Bar Association

5,000 business practices, and to the plight of hundreds of business men who are finding out that they are in danger of penalties for failing to comply with provisions that they never dreamed were applicable to them.

The meeting was held in the building of the Association of the Bar of the City of New York. President Daniel J. Kenefick called it to order on Thursday afternoon at two o'clock. This session was devoted to receiving the reports of the Committee on Nominations, the Executive Committee, and the treasurer of the Association. An adjournment was then taken until Friday morning, and Thursday afternoon was devoted to a meeting of the Section of the Association composed of the Presidents of the Federation of Bar Associations, Committees on Character and Fitness and Presidents of Local Bar Associations of the State.

Georgia Speaker Criticizes Radical Proposals

Mr. Rollin W. Meeker, President of the Federation of Bar Associations, presided and the principal address was delivered by Hon. John M. Slaton, former Governor of Georgia. The speaker criticized the prevailing tendency to welcome proposals for radical change, and said that the public did not understand that change might go backward as well as forward. He criticized the proposed Child Labor Amendment, declaring that "it is hard to trace a difference between this suggestion and the extremist decrees of Bolshevism under Lenin, which destroyed the integrity of the family and made children the wards

of the State." He also denounced the bill recommended by the Senate Judiciary Committee which would forbid a Federal judge to comment to the jury on the facts of the case being tried.

At the session Friday morning Hon. Thomas D. Thacher, former Solicitor General of the United States, delivered an address on "Invasions of Judicial Powers," which was the subject which had been selected for the principal discussion at the meeting, pursuant to a constitutional provision. This was followed by a general discussion led by representatives from the several judicial districts. At the following session Mr. Gilbert H. Montagne delivered an address on "Law Making by Executive Fiat under the National Industrial Recovery Act," to which address reference has already been made.

Mr. George H. Pond, who reported for the Committee on Cooperation between State and Local Bar Associations, called attention to recent legislation in Louisiana affecting the Bar and pointed the moral that if the Bar does not look out after its own prestige, interest and organization, there is always danger that the Legislature may act adversely. Hon. Cuthbert W. Pound explained the workings of the Judicial Council, which is charged with the duty of recommending changes in procedural law, and declared that the laws must be modernized and simplified. The Association at this session endorsed bills sponsored by the New York County Lawyers Association to abolish the evils of fee-splitting.

At the session Friday evening Mr. Richberg delivered the annual address, above referred to. The concluding session was held on Saturday, when the Association voted in favor of the United States adhering to the Permanent Court of International Justice. Hon. Frederic R. Coudert, chairman of the committee on this subject, pointed out the need for the step, and opposing views were expressed by Mr. Harry Weinberger. Mr. Walbridge S. Taft, reporting for the Committee on Professional Ethics, urged the importance of enforcing the canons, and Mr. Mayer C. Goldman, chairman of the Committee on Public Defenders, urged the elimination of private defense counsel and the assignment of public defenders in criminal cases. Motions to put the Association on record in favor of the proposed Child Labor Amendment and also in favor of a statute barring actions for damages for breach of promise of marriage were referred to the Executive Committee.

Williston on "Change in the Law"

Prof. Samuel Williston, of Harvard University, was the principal speaker at the luncheon of the Association. He spoke on "Change in the Law." At the Annual Dinner, held Saturday evening, former Governor Jospeh B. Ely of Massachusetts and Representative James M. Wadsworth made addresses, both urging that the government be kept within constitutional limits. Chief Judge Frederick E. Crane, of the New York Court of Appeals, also delivered an address, in which he urged that a chance be given to the young man in the legal profession.

John Godfrey Saxe of New York City was elected president at this meeting, succeeding Daniel J. Kenefick of Buffalo. Charles W. Walton of Albany and Harry M. Ingram of Potsdam were re-elected secretary and treasurer. Vice-presidents from the nine districts are as follows: Allen Wardwell of New York, first; Joseph Rosch of Albany, third; Jackson A. Dykman of Brooklyn, second; Fred Linus Carroll of Johnstown, fourth; George H. Bond of Syracuse, fifth; Leon C. Rhodes of Binghamton, sixth; Eugene Raines of Rochester, seventh; John Lord O'Brien of Buffalo, eighth; William F. Bleakey of Yonkers, ninth.

Ohio

Mid-Winter Meeting of Ohio State Bar Association Refers Report Recommending Appointive Judiciary Back to Committee for Further Consideration and Report—Other Reports Acted On, etc.

The mid-winter meeting of the Ohio State Bar Association, held in Cleveland on Jan. 24, concerned itself mainly with taking action on important committee reports. President George W. Spooner presided. The address of welcome on behalf of the Cleveland Bar Association and the Cuyahoga County Bar Association was delivered by Hon. Sylvester V. McMahon, president of the former organization.

A unique feature of the meeting was a poetical greeting to the members, paying tribute to the leaders of the past and extending best wishes for the future, which was delivered by Past President Simeon M. Johnson of Cincinnati. President Spooner dealt with the provision of the Constitution that it is the duty of the lawyer "to uphold courtesy in the legal profession and to cultivate cordial intercourse among the members of the Bar." He laid special stress on the reciprocal duties of the older and younger members of the Bar.

As the General Assembly is now in session, the report of the Committee on Legislation, was especially timely. Chairman Frank X. Schaut of Cleveland stated that this committee had received the following measures, heretofore approved by the Association, for introduction into the legislative body:

Legislative Program for This Year

A bill to permit suits against the state for negligence arising on state highways; a uniform municipal court bill; a bill providing for the simplification of appellate procedure; a federal judgment lien bill; a bill providing for the execution, recording and acknowledgment of leases involving mineral rights; amendment to the criminal code relating to manslaughter, suspension of sentence and robbery and larceny; a bill to amend Section 1465-90, General Code, relating to appeals from the Industrial Commission; a bill to abolish justice of the peace courts; and certain amendments to the Probate Code. The committee also reported that there had been submitted to it a proposed measure relating to deficiency judgments on foreclosure, which was referred to the Committee on Judicial Administration and Legal Reform for consideration and report.

Of general interest is the Association's disposition of the reports of the Sub-Committee on the Selection and Tenure of Judges, of the Committee on Integration of the Bar, and of the Committee on the Unauthorized Practice of Law. The Ohio Bar Association Report (Feb. 4) gives this account of the first named report:

"The report of this Sub-Committee was presented by George R. Murray of Dayton, and recommended the Federal plan of appointment of judges of the Supreme, Appellate and Common Pleas Courts by the Governor during good behavior, subject to the approval by the State Senate, and that the Chief Justice and Judges of said courts now in office or elected to such office at the election at which the amendment is adopted shall serve until the end of their respective terms or until death, removal or resignation. The entire subject-matter of this report was referred back to the Committee for further consideration and report at the Annual Meeting."

Integration of the Bar

Of the reports of the two other committees, in the order named above, the same publication says:

"Robert Guinther, Akron, Chairman of the Committee on Integration of the Bar, presented its report, which reviewed the action taken by this Association with reference to the integration of the bar, and stated that the Committee had refrained from presenting any draft of rule to the Supreme Court to integrate the bar by court rule, because the Committee felt that it should not be presented until the lawyers of

Ohio could be made more thoroughly acquainted with the subject, and until they had had full opportunity to voice their opinion, first, as to the desirability of integration, and, second, as to the method by which it could be accomplished. After discussion, by action of the Association, the committee was continued, with instructions that it shall not submit a rule to the Supreme Court until the Ohio State Bar Association assembled in Convention approves whatsoever plan may be finally suggested.

"The Committee on Unauthorized Practice of the Law, speaking through Chairman Milo J. Warner of Toledo, reviewed the activities in this regard in the state, and recommended that the Association go on record in support of the proposition that whether a certain course of conduct constitutes the practice of law should be left to the courts for determination, that the Committee continue as a coordinating and advisory committee only with local committees and associations, intervening only on special request, and that it be authorized to communicate with all local Bar Associations, committees and groups to secure up-to-date information and to prepare for distribution a printed pamphlet concerning all activities in Ohio concerning the unauthorized practice of the law. These recommendations were approved."

Institutes on Special Topics

Reports of other important committees were received and acted on. A new feature of the meetings of the Ohio Bar Association are the Institutes on special topics conducted by distinguished members of the teaching branch of the profession. At Cleveland there was an Institute on the Development of the Law of Evidence which was conducted by Dean W. T. Dunmore of Western Reserve University and one on the Law of Declaratory Judgments, conducted by Prof. W. W. Dawson of the same institution.

At the banquet, at which Mr. Carl D. Friebolin was Toastmaster, Hon. John Weld Peck, of Cincinnati, former judge of the U. S. District Court, spoke on "The Lawyer and the Constitution," and Hon. Newton D. Baker, of Cleveland, spoke on "Democracy and the Judiciary."

There was a Junior Bar dinner and meeting Thursday evening, presided over by Mr. J. Paul McNamara of Columbus. Former State Bar President William S. Pickerel of Dayton delivered an address on "The Young Lawyer's Perspective." The Junior Bar group endorsed the proposal to abolish Justices of the Peace and to establish a small claims and minor offenses court. It also appointed a committee to investigate unauthorized practice of law, to prosecute those guilty of it, and to collect and publish information relative to the subject.

Oklahoma

Oklahoma State Bar Holds Fifth Annual Meeting — Outstanding Accomplishments During Past Year—Notable Addresses Delivered—New Board of Governors

The Fifth Annual meeting of the State Bar of Oklahoma was held at Oklahoma City, on December 28 and 29, 1934, and was presided over by President Charles B. Cochran of Oklahoma City. This was the first annual meeting held in Oklahoma City since 1930 and was exceptionally well attended.

The meeting opened with the address of welcome by Eugene Jordan of Oklahoma City. The response on behalf of the Bar was given by Supreme Judge-elect, Thos. L. Gibson of Muskogee. This was followed by the annual address of the President, Hon. Chas. B. Cochran of Oklahoma City. The report of the Board of Governors of the State Bar was given by Hon. Ben F. Williams, member of the Board of Governors, of Norman, Oklahoma. This was followed by a very able address by Hon. Fletcher Riley, Chief Justice of the Oklahoma Supreme Court. The report of the Committee of State Bar Examiners was given by Hon. Chas. P. Gotwals of Muskogee, Oklahoma, member of the Committee of State Bar Examiners.

At one o'clock P. M. the general assembly adjourned to convene at the district luncheons. The nine Supreme Court Districts were consolidated into five separate luncheons which were constituted open forums where discussion on any issues which might come before the State Bar was in order. There was no time limit placed upon the discussion, and many of them lasted far into the afternoon. One of the principal subjects coming on for discussion was that of raising the standards of admission to the State Bar to conform to the standard of the American Bar Association as near as possible. The consensus of opinion of all those assembled at the different luncheons was that this should be done at as early a date as possible.

The annual banquet was held Friday evening, December 28th, in the main dining room of the Biltmore Hotel, the principal address being given by the Hon. Scott M. Loftin, President of the American Bar Association. The address of Mr. Loftin was one of the high spots of the meeting.

BEN F. WILLIAMS
President, Oklahoma State Bar

Saturday morning, December 29, the report of the committee to canvass the ballots cast at the recent election of the members of the Board of Governors showed that the following had been chosen for the ensuing year: First District, E. C. Fitzgerald, Miami; Second, C. C. Williams, Poteau; Third, H. L. Fogg, El Reno; Fourth, F. B. H. Spellman, Alva; Fifth, Ben F. Williams, Norman; Sixth, A. R. Swank, Stillwater; Seventh, Malcolm E. Rosser, Muskogee; Eighth, Thos. J. Horsley, Wewoka; Ninth, E. L. Richardson, Lawton; Albert C. Hunt, Oklahoma City, Governor-at-Large, Alger Melton, Chickasha, Edgar A. de Mueles, Tulsa, and C. B. Cochran, Oklahoma City, being holdover Governors-at-Large.

"The Commerce Clause of the Constitution"

This was followed by a very able address by the Hon. Edgar S. Vaught, Judge of the U. S. District Court for the Western District of Oklahoma, entitled, "Meaning of the Commerce Clause of the Constitution."

The report of the Committee on the Unauthorized Practice of the Law was given by the Hon. Whit Y. Mauzy, Tulsa, whose report was well received, especially in view of the recent victory of the State Bar in the test case before the Supreme Court against the Retail Credit Association of Oklahoma City.

The report of the Treasurer of the State Bar was given by the Hon. H. L. Fogg, of El Reno, and that of the Com-

mittee on Necrology was given by Mr. Reuel Haskell, Jr., Secretary of the State Bar.

Among the outstanding accomplishments of the State Bar during the past year was the work of the Judicial Council of the State of Oklahoma, which was authorized at the 1933 meeting at McAllister, and put into effect by the Board of Governors of the State Bar, with the approval of the Supreme Court, early in the year of 1934. The Council, together with the Supreme Court, has inaugurated the system of using District Judges and outstanding members of the Bar throughout the State to act as special masters of the Supreme Court and aid the Supreme Court in catching up with its docket. Gratifying progress was reported in this connection.

Governor Promises Full Cooperation

The address of Chief Justice Riley brought out the fact that Governor-elect E. W. Marland had signified to the Judiciary and the Bar that he expected them to submit to him a program for the betterment of the administration of justice and that he would do all in his power to carry the same out. This gives the lawyers of Oklahoma great encouragement, and the various committees are at work preparing a forward-looking program.

At the close of the general meeting, the newly elected Board of Governors met for the purpose of reorganization. Ben F. Williams of Norman, was elected President, F. B. H. Spellman of Alva, 1st Vice President, Malcolm E. Rosser of Muskogee, 2nd Vice President, E. C. Fitzgerald of Miami, 3rd Vice President, E. L. Richardson of Lawton, Treasurer, and Reuel Haskell, Jr., of Oklahoma City, Secretary. Mr. F. B. H. Spellman of Alva was also appointed Editor in Chief of the Oklahoma State Bar Journal, with Mr. A. W. Trice of Hugo as Associate Editor. Mr. Spellman was also appointed Chairman of the Committee to cooperate with the American Bar Association on its National Bar Program for the ensuing year.

Mr. C. B. Cochran, Alger Melton and H. L. Fogg were named as members of the Executive Committee for the ensuing year. Mr. A. R. Swank of Stillwater was reappointed as Chairman of the Judicial Council for the ensuing year. Mr. Albert C. Hunt of Oklahoma City was appointed Chairman of the Committee on Criminal Law and Its Enforcement. Mr. Thos. J. Horsley of Wewoka was appointed Chairman of the Committee on the Restatement of the Law. The several Administrative Committees of the State Bar were named ex-officio members of the Committee on the Unauthorized practice of the Law, for their respective districts, with the exception of Oklahoma County and Tulsa County, where a special committee was appointed.

F. B. H. SPELLMAN,
Editor-in-Chief, Oklahoma State Bar Journal

Utah

ALLEN S. TINGEY
President, Utah State Bar

Utah State Bar Recommends Constitutional Amendment Providing for Appointment of Judges by Governor from List Selected by Bar—Improvements in Criminal Law Procedure Urged on Legislature

Meeting on December 15th and 16th at Salt Lake City, more than five hundred members of the Bar and their guests listened to an outstanding address by Dean James Grafton Rogers of the University of Colorado Law School on "The Lawyer of Tomorrow." Dean William H. Leary of the University of Utah Law School presided over the banquet which closed the session Saturday evening, and presented in addition to Dean Rogers, Allen S. Tingey, the President for 1935, and Royal J. Douglas and Frank A. Johnson, Commissioners-elect. Other officers will be William E. Davis, Vice President, and L. M. Cummings, re-elected Secretary.

At the regular sessions, covering two days in order to give full time for the final disposition of the reports on Selection of the Judiciary and Criminal Procedure, W. Hal Farr, President of the Salt Lake County Bar Association, welcomed the members to Salt Lake, following which President Samuel C. Powell addressed the convention and reported on the activities of the past year. Mr. Powell then called upon Secretary Cummings, Chairman Dean F. Brayton of the Judiciary Committee, Chairman Carl A. Badger of the Committee on Criminal Procedure, and Chairman Sam D. Thurman of the Board of Bar Examiners to make their reports. Mr. R. A. McBroom and Mr. J. A. Howell also reported for the Committees on Relations with Trust Companies, and the Judicial Council, but made no recommendations for action other than the continuance of the work of these committees.

Friday noon was devoted to four luncheon sections—on Admissions to the Bar, the Uniform Criminal Code, Unlawful Practice, and a section attended by Federal, State, District, County, and City attorneys. Reconvening, the bar listened to memorials in honor of members passing on during the last year. It then passed without opposition a resolution calling for the appointment of a committee to study the present rules of admission for the purpose of recommending such changes as will raise Utah's standards to the minimum recommended by the American Bar Association. The recommendations are to be presented to the Board of Commissioners and will become effective when adopted by them and approved by the Supreme Court.

With respect to matters of unlawful practice, the meeting adopted a resolution requesting the Commissioners to continue their work in preventing the unlawful practice of the law by laymen or lay agencies and in checking capping and ambulance chasing.

Judicial Selection and Criminal Procedure

Preliminary matters thus disposed of, the meeting then turned its attention to the report of the committee on Judicial Selection, and the report on Criminal Procedure. Following continued debate on these two subjects for the balance of Friday and all of Saturday, the bar in substance approved the recommendations of these committees and they are now before the Legislature for action.

The recommendation of the Committee on Judicial Selection is thus summed up in the Report of the Utah State Bar to the State Legislature:

"It is proposed that both Supreme and District Court judges shall be appointed by the Governor of the State for the terms now provided by law, each appointment to be made from a list of names selected by the Bar of the State or District in a secret ballot taken under the auspices of the Bar Commissioners. Thus, selection is made by the persons most capable of doing it. But, the Gov-

ernor is given a choice, which prevents the Bar having the final say in the matter. It is further provided that, at the end of his term, a Judge shall be automatically reappointed unless charges of failure properly to discharge the duties of his office shall have been sustained against him after a public hearing, by two-thirds of the members of a committee of fifteen lawyers appointed as a standing committee for such purpose annually by the Supreme Court or unless impeachment proceedings have been initiated and sustained against him. It is conceived that this provision insures the retention in office of a capable judge, while at the same time it so enlarges and extends the ways and means of removing an unsatisfactory one as to make it readily possible to cause such removal when it is necessary."

The recommendations of the Committee on Uniform Judicial Procedure are contained in the same report to the Legislature. They generally follow the provisions of the Model Code of the American Law Institute. However, two of the committee recommendations viz: the proposal to permit the court to instruct the jury orally and to comment on the evidence and the credibility of the witnesses, and the proposal permitting the prosecution to comment on the failure of the defendant to testify, were not approved by the State Bar and hence were not presented for legislative approval.

Organization to Act When Charges Are Made Against Judiciary

The meeting was also marked by a telegram from President Scott M. Loftin of the American Bar Association, and by a resolution of the bar which pledged the bar to support measures to reduce traffic accidents. By a two to one vote the bar also adopted the principle that the organization should take action whenever accusations are made with respect to the competency or integrity of members of the judiciary, and that, upon investigation, the accusations or rumors be answered if determined to be unfounded, or impeachment recommended if there be merit to the charges. The minority opposed such a principle on the ground that such action was not the business of the bar.

Attendance was not consistently as large as in previous years since the formation of the State Bar, although almost all lawyers in the state attended at least some of the sessions. The long meeting was necessary, however, in order to carry out the mandate given in 1933, when the bar requested at least a full day for the sole purpose of discussion of the Uniform Criminal Code and the Constitutional Amendment concerning Selection of the Judiciary, matters which have been before the profession for some years.

Mr. Tingey, the new President, is State Chairman of the Republican Party, and has been active in bar association matters for many years. A graduate of George Washington University, he is young and vigorous, and should administer the affairs of the Utah Bar with ability and courage during the coming year. The first meeting of the Commission saw the appointment of committees to carry on the program of the Utah Bar which follows the National Bar Program, and also a committee to sponsor and study bar measures and bills affecting the practice which will come before the Utah Legislature now in session.

Miscellaneous

At a meeting of the District Attorneys Association of the State of New York, held in January, it was decided to advocate a divided verdict in jury trials; the reduction of maximum perjury sen-

tences from twenty to five years and the division of the crime of perjury into two classes, felony and misdemeanor, to obtain more convictions for this offense; that homicide by automobile be described by some other term than manslaughter; that juries have a voice in the sentence as well as the verdict in criminal cases, and that district attorneys be allowed to submit misdemeanors as well as felonies to the grand jury.

State Senator John L. Buckley, Chairman of the Commission on the Administration of Justice, addressed the meeting on the revision of the Code of Criminal Procedure now in progress.

New officers of the Association are as follows: President, Nathan D. Lapham, of Geneva, District Attorney of Ontario County; Vice-President, Thomas H. Walsh, of Stapleton, L. I., District Attorney of Richmond County; Treasurer, John R. Schwarz, of Poughkeepsie, District Attorney of Dutchess County. William H. Munson, of Medina, was re-elected Secretary.

At the recent annual meeting of the Nassau County (N. Y.) Bar Association, the following officers were elected: Eugene W. Denton, of New Hyde Park, President; Frederic W. Shephard, of Woodmere, First Vice-President; George B. Serenbetz, of Hempstead, Second Vice-President; James L. Dowsey, of Manhasset, Third Vice-President; O. Edward Payne, of Glen Cove, Treasurer; Theodore E. Ripsom, of Garden City, Secretary.

Annual election of officers of the Lawyers' Association of Indianapolis was held in December. Newly elected officers for the current year are: President, Donald F. LaFuze; Vice-President, Edwin C. Berryhill; Secretary, Charles W. Holder; Treasurer, Harry L. Gause; Directors, Oscar Hagemier, Sherwood Blue, Paul R. Summers.

Association Representatives From the Second Judicial Circuit Meet in New York

Immediately following the annual meeting of the New York State Bar Association, representatives of that organization and of other associations from New York and from the states of Vermont and Connecticut met on the afternoon of January 26th at the Association of the Bar of the City of New York, on the call of Mr. Charles H. Strong. Mr. Strong initiated conferences of this type with one which he called last year as vice president of the American Bar Association for the Second Judicial Circuit, and as a result, he was requested by President Loftin of the Association to organize the meeting again this year.

Mr. Strong presided and introduced Mr. George H. Bond, member of the General Council from New York, and Mr. Philip J. Wickser, secretary of the Co-ordination Committee, who dwelt upon the need of closer co-operation in the work of state and local bar associations with each other and with the American Bar Association, and referred to the need for discussion of the development of some type of formal connection between those three classes of organizations. Mr. Wickser's remarks are printed elsewhere in the Journal. Mr. Walter S. Fenton, member of the General Council from Vermont and Mr. Paul Chase of the Vermont State Council reported on the progress which was being made in their jurisdiction on the subjects of the National Bar Program, as did also two state council members from Connecticut, Mr. Warren F. Cressy, and Mr. John T. Hubbard. Speakers from New York City included Mr. Charles A. Boston and Mr. Origen S. Seymour, who spoke on professional ethics; Frederic R. Coudert and Jeremiah T. Mahoney who discussed judicial selection; Thomas E. Dewey, George Z. Medalie and Irving I. Goldsmith, who reported on the progress of their committees on criminal law; Edwin M. Otterbourg who spoke on unauthorized practice and Sol M. Stroock and George A. Spiegelberg who spoke on legal education. Terence J. McManus, secretary of the New York County Lawyers' Association spoke in reference to its participation in the National Bar Program, and Mr. M. Levy pledged the cooperation of the Bronx County Bar Association in this work. Others present included: Thomas R. Cotter, member of the State Council from N. Y.; Robert C. Morris, President of the New York County Lawyers' Association; P. R. Buttenheim, President of the Middletown, N. Y., Bar Association; Francis J. Sullivan, member of the State Council from N. Y.; George Sylvester, New York County Lawyers' Association; Charles E. Hughes, Jr., Association of the Bar of the City of New York; Floyd E. Anderson, President of the Broome County Bar Association; and Frederic R. Coudert, Jr., New York County Lawyers' Association.

The meeting lasted from 2:30 to 6:00 P. M., and it was agreed by all present to have been of considerable value in developing ideas regarding the work which is being done on the National Bar Program and the need for discussion and thought with reference to the Coordination Plan.

The Movement for Bar Integration

Apparently Oregon is the first of fourteen states to achieve victory in the present campaign for integration. The Oregon Bar Association's excellent bill was rushed in both houses at once and came through with only nine opposing votes. The Governor signed the bill February 14, an appropriate day.

The *Columbia State* on February 13 reported passage of the South Carolina State Bar Association bill in the assembly by a vote of 96 to 13. We have no means for estimating opposition in the senate.

The thirty-eight circuit disciplinary committees appointed by the Missouri Supreme Court were convened by their chairmen shortly after November first, when the rule took effect. One of the four members in each committee was chosen as secretary. The Supreme Court appointed as general chairman of all the committees the Hon. Boyle G. Clark, of Columbia. Thus Missouri responds to the American Bar Association's appeal for action in respect to unethical conduct. The grievance committee work is tremendously expanded and properly supported by a levy of three dollars per annum to be paid by all practitioners. A second appropriate duty devolves upon these committees, that of preventing the practice of law by unlicensed persons.

That neither of these functions is to be neglected is shown by the appointment by Chairman Clark of an advisory committee of five prominent lawyers. This committee is prepared to answer questions concerning the interpretation of the canons of ethics, officially adopted by the Supreme Court, as a means for securing uniform practice throughout the state. And by the action of the Supreme Court in providing special representatives to investigate complaints and otherwise assist the committees. George F. Wise was apppointed for St. Louis, David M. Proctor for Kansas City, and Victor C. Gladney for the rest of the state. Mr. Gladney will devote all of his time to the work. The Supreme Court, with the aid of practitioners, thus comes to grip with both unethical and unlicensed practice. Apparently Missouri proposes to exemplify the active, as well as the passive, form of the verb "to show."

The Ohio State Bar Asssociation committee on organization, headed by Mr. Robert Guinther, who expounded the theory of integration through Supreme Court rules, has prepared a rule which, if adopted, will give the bar of Ohio as thorough and practical a form of organization as exists in any state. The form is also one which embodies in full the democratic principle of equal participation by all members in the choice of representatives to serve on the governing body. It is presumed that the Supreme Court will be memorialized by this committee after approval of the text has been had at the regular annual meeting of the Association.

In reporting to the Indiana State Bar Association at its winter meeting held Dec. 15, its commmittee on legislation said that it would sponsor just three measures in the coming legislative session. One would be for broad rule-making power for the Supreme Court, one for creation of a judicial council, and the third one for bar integration. The bar bill introduced two years ago will again be offered, but if it appears politic, a shorter bill may be substituted. In the short draft the bill directs the Supreme Court to prescribe the mode of organization, following generally the principle which has had such success in Kentucky. The Indiana State Bar Association is one of several which have developed very strong leadership in recent years.

One of the latest state bar associations to come within the periphery of bar integration is that in Pennsylvania, where Mr. Edward S. McKaig is chairman of a committee on this subject. It will be interesting to learn what the lawyers of this populous state consider the best route to acquire bar unification and needed powers. Like a number of other state associations the Pennsylvania State Bar Association has found it hard to retain members and collect dues.

In furtherance of its bill the bar integration committee of the Michigan Bar Association has prepared an excellent pocket folder which explains the nature of the measure for the benefit of laymen and lay legislators. There are twelve questions and answers, five paragraphs by way of summary, and extracts from letters telling of the success under similar acts in other states. Copies are obtainable through Professor Blythe E. Stason, Law School, Ann Arbor, Mich., who is secretary. Similar material, concise and informative, would doubtless be extremely useful in all states where bills have been introduced. There appear to be thirteen or fourteen such states at this time.

The question of early organization of the entire bar of Colorado under supreme court rules has been raised by introduction in the present legislature of the briefest act yet drafted. The Colorado Supreme Court appeared willing, a number of months ago, to employ its supervisory power as an aid to the bar in attaining inclusive membership. There was, as usual, opposition among lawyers. The introduction of this bill appears to precede formal decision by the State Bar Association, and to be prompted by the policy of making an issue of the question. There will doubtless be a lively campaign for and against the measure, since nothing ever goes by default among the inhabitants of our loftiest and most ethereal state. There is but one section in the bill, and it reads as follows:

Sec. 1. The supreme court shall, from time to time, adopt and promulgate such rules and regulations as the court may deem proper for the purpose of organizing, integrating and operating a state bar association, which rules shall provide, among other things, for the admission to practice, discipline and disbarment of attorneys and shall further provide for an annual license fee to be paid by each attorney in the state of Colorado in a sum not to exceed ten dollars. Such rules when so adopted and promulgated shall supersede any statute in conflict therewith.

This text may be suggestive to bar committees in other states which find

opposition to the longer acts too formidable.

The bar integration act introduced on behalf of the Nebraska State Bar Association embodies every substantial provision and feature of the model acts in seventeen sections. It is relatively brief without giving an appearance of brevity. It creates an association to be known as the Nebraska State Bar Association and confers appropriate organic powers. The board of governors is to be constituted by members elected in the several judicial districts to the number of judges serving in such districts. The disposition of drafting committees to produce original bills is wholesome. It implies a careful study of all existing statutes, and permits of adapting the provisions to local needs.

Nebraska should have been the pioneer state. It had its bill introduced in 1917, before there was even a model act. Failure then was not due to the State Bar Association, but to its numerical weakness. This has been fully overcome in recent years.

The bar integration bill has already passed in Oregon and at the time this is written the prospects for success appear most promising in Nebraska, Minnesota, Wisconsin, Michigan, Arkansas and Georgia. Reports indicate that chances are good in Indiana and South Carolina. The Florida State Bar Association, which has been most progressive in all respects in recent years, is likely to be committed to integration in the near future.

Arkansas State Council Active

THE Arkansas State Council of the American Bar Association held a meeting in Little Rock on January 7, at which the various subjects on the program of the American Bar Association were discussed, according to a letter received from Mr. William H. Arnold, of Texarkana, a member of the Council. Mr. R. E. Wiley, President of the Arkansas Bar Association, attended and pledged cooperation. The Council made plans for a drive to increase American Bar Association membership in the state and also decided to present to the Arkansas Legislature four proposed acts approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association: The Uniform Machine Gun Act, Uniform Crime Extradition Act, Uniform Act to Secure Attendance of Witnesses from Without the State, and the Uniform Narcotic Drug Act.

Wisconsin Adopts New Alibi Rule

(From The Panel, Jan.-Feb.)

On June 26, 1934, the Wisconsin Supreme Court by order adopted and promulgated the following rule:

"Alibi to be Pleaded. In courts of record in case the defendant intends to rely upon an alibi as a defense he shall give to the prosecuting attorney written notice thereof on the day of arraignment, stating particularly the place where he claims to have been when the offense is alleged to have been committed; in default of such notice, evidence of the alibi shall not be received unless the court, for good cause shown shall otherwise order."

The rule was made effective January 1, 1935.

Securing the adoption of the rule was much simplified by the Legislative recognition of the power of the Supreme Court to make rules for pleadings, practice and procedure in 1929.